

FEASIBLE OPTIONS FOR
RULE OF LAW PROGRAMMING

Rule of Law Indefinite Quantity Contract
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EXECUTIVE SUMMARY

The USAID Mission to the West Bank and Gaza was established in August of 1994 and has focused on three strategic objectives: 1) expanding economic opportunities for Palestinians; 2) increasing access to and more efficient use of scarce water resources; and 3) encouraging establishment of a functioning and accountable system of governance that is responsive to the needs and expectations of the Palestinian people (democracy and governance). A rule of law (ROL) program covering such topics as judicial administration, access to justice, and structural reform was not included. Constraints identified in late 1995 and early 1996 during a USAID pilot effort on judicial administration training indicated that donor assistance at that time would not be effective.

The three constraints were the absence of consolidated clear lines of authority within the legal community, the absence of unified laws and administrative procedures, and the absence of cooperative relations between the West Bank and Gaza legal communities. The Mission stipulated three preconditions for significant improvement in the judicial sector: 1) demonstrated political commitment to make improvements in the justice sector and clarify responsibilities and lines of authority within the judicial sector and legal community; 2) progress toward unification and modernization of the legal framework governing the structure and operation of the West Bank and Gaza judicial systems; and 3) greater willingness among the West Bank and Gaza judicial communities to work together.

With evidence of progress in these areas such as Palestinian Legislative Council review of the judiciary law to unite the West Bank and Gaza legal and judicial systems as well as current efforts on unification and redrafting of Civil and Criminal Codes, the Mission decided to reassess whether ROL should form part of its programming strategy. A six-person team of ROL program specialists was engaged to assist the Mission in determining the feasible options for ROL programming.

Methodology

The Feasible Options team approach included a comprehensive listing of potential ROL subject areas, analysis of the status of rule of law programming in West Bank and Gaza, assessment of needs, a focus on strategic considerations, identification of high potential areas, coordination with other international donors, discussions with Mission officials and potential counterparts/partners, and selection and development of ROL program options. The team focused on 14 ROL areas: judicial training, court modernization, legal practice development, administrative law, prosecutorial system development, alternative dispute resolution, commercial law, land/property, comparative law, constitutional law, legal information, independence of the judiciary, human rights, and public defender/legal aid. The legal areas of law enforcement and criminal law were seen as lower priorities than the selected 14 areas. Substantial financial support was being provided by other donors in criminal law and law enforcement in contrast to other ROL areas. This international donor support included construction and equipment for the West Bank and Gaza police academy, training programs for the police, penal institutional training programs, forensics training and equipment for laboratories, unification and redrafting of the Civil and Criminal Codes, and review and revision of criminal procedures legislation. In contrast, the only programming support provided to the judicial sector were the training programs funded by USIA and USAID.

Previous Rule of Law Project Recommendations and Donor Activities

The recommended projects of previous ROL studies on West Bank and Gaza included representation for indigent criminal offenders, legal aid (civil cases), judicial training institute, lawyer's training institute, judicial sector plan, minor judicial administration activities, court facility construction, legal information development, judicial training, court administration improvement, alternative dispute resolution (ADR), and commercial law development. Few details or analyses were provided in the studies for these recommendations. Issues such as potential counterparts and project feasibility were not addressed. No substantive projects have been undertaken in these areas.

Over the four-year period since the establishment of the Palestinian Authority in July of 1994, a major part of ROL assistance was for electoral system development, of which a large portion was supported by the U.S. Another focus for international donors has been in law enforcement. Nongovernmental organizations (NGOs) and civil society organizations (CSOs) efforts are oriented primarily to refugee rights, political prisoner rights, public information, and human rights monitoring. After more than three years of planning, a World Bank loan of \$5.5 million to the Palestinian Authority for a ROL project will begin in early 1999 and will support the implementation of a three-year effort on legislation development, court administration, judicial training, alternative dispute resolution mechanisms, and legal information.

In summary, previous and current ROL programming as funded by international donors has focused on electoral systems, law enforcement, legislative drafting, and NGOs. The problem areas, constraints, and needs in rule of law remain extensive and largely unaddressed by current donor efforts.

Findings

Based on the collected information base of analyses of previous studies and interviews with individuals and focus groups representing the legal institutions and key government agencies of West Bank and Gaza, the Feasible Options team found that sufficient progress on the Mission preconditions has been realized to support the undertaking of ROL programming. Although issues do exist, such as extent of judicial independence and the status of the basic law and judicial law that define the interrelationships between the executive, legislative, and judicial branches of government, there are substantial needs that can be addressed by a well designed and comprehensive USAID Rule of Law Program for West Bank and Gaza. The opportunity exists to move forward with ROL programming in a changing and dynamic political, legal, and socioeconomic environment. Important developments that indicate the general feasibility of rule of law programming include:

- Support for ROL programming was voiced at all levels, from the highest Palestinian Authority official interviewed and senior jurists to law practitioners, law faculty, and law students.
- Financial commitment from other donors, in the program areas identified by the Feasible Options team, is none or minimal. While a degree of risk does exist, especially in the issue of judicial independence and in judicial sector development, the team recommends that a comprehensive ROL project be undertaken by the Mission at the earliest time possible.
- The Feasible Options team observed a functioning judicial system in both Gaza and the West Bank. Respondents indicated that the differences in their systems did not adversely affect the day-to-day business of the court.

- A development that supports the eventual unification of laws and procedures in West Bank and Gaza is the legal database currently under development at the Bir Zeit University Law Center. This database, in Arabic and English, displays legislation from both areas for specified legal issues and categories and has assisted legal researchers engaged in developing new legislation.
- Over the past two years there has been much activity in drafting national laws including the Basic Law, Judicial Law, Civil and Criminal Codes, and specific pieces of legislation such as the Investment and NGO laws. These Civil and Criminal Codes, projected to be drafted by February of 1999, will move the West Bank and Gaza closer together in terms of legal system unification.
- The Palestine Bar Association has been formed by unifying the West Bank branch of the Jordanian Bar Association with the Gaza Bar Association. This unification is evidence of a greater willingness of the legal communities of West Bank and Gaza to work together. The Association has combined membership and jointly produced a quarterly law journal.
- Joint drafting of national legislation by the Legal Department of the Palestinian Legislative Council is also a positive indication. This drafting is accomplished by 12 West Bank and 8 Gaza attorneys and legislative specialists working in tandem and with extensive cooperation between the separated territories.
- The Feasible Options team found no evidence of an absence or lack of cooperative relations between the West Bank and Gaza legal communities. The team concludes that the precondition of greater willingness among the West Bank and Gaza judicial communities to work together has been met and should no longer be considered an impediment to USAID-sponsored ROL programming.

Feasible Options

The lack and delay of international donor efforts in the ROL in West Bank and Gaza and the clear evidence of needs call for action. The Feasible Options team recommends a comprehensive West Bank and Gaza Rule of Law Program comprised, at a minimum, of four projects or components that include Legal Education, Legal Professions, Judicial Sector, and Commercial Law. Additional possibilities for consideration are Rule of Law/Civil Society Organizations and Administrative Law. While these first four components could be phased in on differing time lines, the maximum impact would be realized by a simultaneous effort. The interrelationships between the components reflect the existing reality and complexity of the legal environment in Gaza and the West Bank. By strengthening these relationships, the overall effect would be larger, synergistically, than the sum of the component parts. Results and elements of the six Rule of Law Program Components include:

- *Judicial sector.* The creation of the Judicial Institute would provide an immediate forum for judicial sector development activities and contribute to the creation of a ROL reform movement. Model courts in West Bank and Gaza would develop and implement appropriate court administration procedures for subsequent generalization to other courts. Construction/rehabilitation of court facilities could be undertaken in conjunction with the model courts development effort.
- *Legal education.* Developing the curricula of law schools, augmenting the law school libraries and instituting current legal information technologies, and providing other training programs

would immediately assist students to apply new legal concepts and skills including human rights, ethics, commercial law, alternative dispute resolution, and practical legal clinic programming. Linking the Bir Zeit University Law Center legal data base to key institutions, to the Bar Association and Palestinian Legislative Council in addition to law schools, would contribute to the unification process and train legal professionals in legal information access.

- *Commercial law.* A comprehensive commercial law development program would offer much needed assistance and link U.S. technical expertise with the West Bank and Gaza effort to develop a sustainable market economy to international standards and expectations.
- *Legal professions.* Raising the standards of current and new lawyers through the legal professions component with the Bar Association would support sustainability of short-term and long-term ROL objectives.
- *Rule of Law/civil society organizations.* ROL objectives such as public defense, legal representation of the indigent, community support for rule of law programming, judicial standards and salaries, and judicial independence can be added to the existing Mission program of support to civil society organizations.
- *Administrative law.* The administrative law component would support transparency in the administration of government regulations, including in the financial sector activities of banking, securities, and insurance.

The proposed comprehensive Rule of Law Program would support the ongoing evolution and development of a West Bank and Gaza legal system of effective, efficient, and equitable administration of justice; accountable governance; and open and free markets. Criminal courts would be improved through improved case processing and case resolution. The proposed Rule of Law Components activities, by providing needed training to the legal professionals and jurists and through strengthening of the legal structure and legal system, would provide a foundation for improved law enforcement and criminal justice.

Program Priorities, Timing, and Estimated Resources

Consistent with a comprehensive strategic approach to improve the ROL in West Bank and Gaza, and absent financial resource limits or other major considerations, the Feasible Options team recommends that all six components of the proposed Rule of Law Program be undertaken. Of the six components, the Administrative Law Component is seen as the least feasible given the lack of understanding or interest in this complex area and the lack of an obvious counterpart agency. The Rule of Law/Civil Society Organization Component could be implemented with adjustments to the existing Mission support to CSOs. Accordingly, the team recommends that the Mission consider undertaking, at a minimum, a comprehensive four-component program to improve the state of law and legal institutions in West Bank and Gaza, to include an emphasis on commercial law. Each of the four components forming such a program—commercial law, legal education, judicial sector, and strengthening of the legal profession—could also be implemented as free-standing activities.

Each project component should have a minimum project period of three years and a maximum of six years. A demonstration by USAID of a long-term commitment will support counterpart commitment to the Rule of Law Program and ensure that other potential donors will have sufficient time to provide supplemental funding.

The estimated budget for the four-component comprehensive Rule of Law Program would be no less than \$13 million for the initial three-year period and no more than \$18 million. Costs for new court construction have been estimated by another donor at a combined \$15 million for a facility in both West Bank and Gaza. The construction of a facility for the Judicial Institute would be approximately \$500,000 judging from the donor contributions of \$400,000 for the new building for the Bir Zeit University Law Center. Adding the Rule of Law/Civil Society Organizations and Administrative Law Components would increase the project budget by an additional \$6 million to \$10 million for the initial three-year period.

Before undertaking any of the six recommended programming options, project designs will be required to develop the specific scopes of work and budgets. The development of these scopes can be accomplished with a series of short-term, two- to three-month, delivery orders. The tasks of the project designs would include the identification of subcomponents for immediate implementation and the development of the longer term component requirements.

Allowing a conservative estimate of three months for design, three months for identification of an agency or contractor, three months for project start-up, and one year for implementation would result in a total of 21 months for the initial results to be realized by the Legal Education, Legal Profession Strengthening, and ROL/CSO Components. The Judicial Sector, Commercial Law, and Administrative Law components should see initial results for their major activities within 33 months.

SECTION I

Introduction

The USAID program for the West Bank and Gaza is a central element of the U.S. government's role in the Palestinian-Israeli peace process. The program supports U.S. interests in promoting regional stability, economic prosperity, and adherence to democratic principles.

Overview, Mission Memorandum
USAID/West Bank and Gaza, 1998

A. Background

In 1995 USAID/West Bank and Gaza initiated a pilot judicial training program. After considering the results of that program and subsequent ROL program assessments, the Mission determined that it was unfeasible to develop an ROL initiative. Over the past three years, the democracy and governance strategy of USAID West Bank and Gaza has focused on civil society, legislative development, and the executive policy making process. USAID has now completed more than two years of program implementation in these areas, the Palestinian Legislative Council (PLC) has made progress toward the passage of a judiciary law to unite the West Bank and Gaza legal systems and the World Bank is supporting projects to redraft civil and criminal codes. Given progress in these and other ROL areas, the USAID West Bank and Gaza Mission decided to reassess whether ROL programming should form part of its strategy.

ROL programming was seen as potentially relating to the Mission's other two strategic areas. In expanding economic opportunities for Palestinians, Mission technical support and project efforts have been in the areas of market development, technology, and finance over a wide range of products and size of firms. The Mission has addressed the critical shortage and economic use of water through technical assistance for planning, developing water sources and distribution systems, and upgrading and extending wastewater systems.

Chemonics received a USAID/West Bank and Gaza Request for Proposal (RFP) in September, 1998. The RFP requested a technical assistance team to reassess the decision by the Mission not to pursue ROL programming according to the findings of a 1996 report.¹ The report identified the following three constraints or discontinuities:

- 1) The absence of unified laws and administrative procedures;
- 2) The absence of consolidated, clear lines of authority within the legal community; and
- 3) The absence of cooperative relations between the West Bank and Gaza legal communities.

These three constraints suggested that the Mission's resources would be more effectively focused on supporting the development of civil society, legislative development, and the executive policy-making process. In addition to these technical and political issues, the Mission included staffing and funding constraints as relevant to developing and managing a comprehensive ROL program.

¹ *Judicial Administration Project in the West Bank and Gaza*, prepared as a report of the Democratic Institutions Support project, March, 1996.

The delivery order's objective was to assist USAID/West Bank and Gaza in determining the feasible options for ROL programming. Phase I, Desk Review and Preliminary Field Work Plan, consisted of a review of relevant reference materials, interviews in Washington, and development of a detailed field work plan. Phase II, Field Assessment and Preparation of Assessment, was conducted in accordance with the Scope of Work and the preliminary field work plan, with adjustments and modifications as required following ongoing review of field work progress and consultation with the Mission.

The Scope of Work required that Chemonics provide three deliverables for Mission review and approval:

- A preliminary field work plan
- A draft assessment
- A final assessment

B. Methodology

The Feasible Options team used inductive and deductive procedures. The approach included a comprehensive listing of potential ROL subject areas, analysis of the status of ROL programming in West Bank and Gaza, assessment of needs, a focus on strategic considerations, identification of high potential areas, coordination/complementarity with other donors, discussions with Mission officials and potential counterparts/ partners, development of options, and incorporation of Mission comments into the final report. For the selected priority ROL subject areas, the team addressed strategic objectives, ROL program focus, and project activities with respect to expected results, effectiveness, and resource requirements.

Given the potentially broad range of ROL subject areas that needed to be addressed, the Feasible Options team focused initially on the six ROL legal areas as listed in the scope of work: judicial training (to include judicial ethics), court modernization, legal practice development, administrative reform (government agency administrative and regulatory law), prosecutorial system development, and alternative dispute resolution. Following review of materials, an additional nine were identified. Emphasis was placed on areas addressed in other administration of justice/rule of law programming by USAID and on the relevant findings and recommendations of the materials reviewed. Commercial law reform and land property title issues were areas that related to the Mission's Strategic Objective of expanding economic opportunities for Palestinians. The other legal areas added were comparative law, constitutional law, legal information, independence of the judiciary, environmental law, human rights, and public defender/legal aid. At the initial meetings with Mission personnel, environmental law and the Mission Strategic Objective in water development were removed from consideration and the final list included 14 subject areas.

According to general USAID practice in ROL programming, criminal law and public safety/security were also removed from consideration. With respect to the scope of work and within the consideration of Mission strategic objectives of responsive governance and expansion of economic opportunities, the legal areas of law enforcement and criminal law were seen as lower priorities than the selected 14 areas. Substantial financial support was being provided by other donors in the criminal law and law enforcement areas, in contrast to other ROL areas. This support included construction and equipment for the police academy from the Netherlands, Sweden, Denmark, and Germany; training programs for the police funded by Norway and Sweden; penal institutional training programs funded by Norway; and forensics training and equipment for laboratories funded by Australia, Spain, and Sweden. World Bank funding was supporting unification and redrafting of

the Civil and Criminal Codes as well as a review and revision of the legislation on criminal procedures. In contrast, the only international donor programming support provided to the judicial sector to date were the training programs funded by USIA and USAID.

C. Previous ROL Analyses and Project Recommendations

Previous studies were reviewed in Phase I of the feasible options effort and the findings and recommendations were noted. The recommended projects included representation for indigent criminal offenders, legal aid (civil cases), judicial training institute, lawyer's training institute, judicial sector plan, a number of minor judicial administration activities, court facility construction, legal information development, judicial training, court administration improvement, alternative dispute resolution (ADR), and commercial law development. Few details or analyses were provided in the studies for these recommendations. Issues such as potential counterparts and project feasibility were not addressed on a project-by-project basis.

SECTION II

Rule of Law Sector Overview

A. ROL Developments Since 1996

The ROL assessment conducted in early 1996 in conjunction with a judicial training project (DIS Report) noted the following discontinuities or constraints that existed in the judicial/legal sector at that time: 1) absence of consolidated, clear lines of authority within the legal community; 2) absence of unified laws and administrative procedures in the West Bank and Gaza; and 3) absence of cooperative relations between the West Bank and Gaza legal communities.

Derived from these three conclusions are the following scope of work preconditions which, if satisfied, would indicate sufficient improvement in the judicial sector for the consideration of USAID support for ROL programming in the West Bank and Gaza:

- 1) Demonstrated political commitment to make improvements in the justice sector and clarify responsibilities and lines of authority within the judicial sector and legal community;
- 2) Progress toward unification and modernization of the legal framework governing the structure and operation of the West Bank and Gaza judicial systems; and
- 3) Greater willingness among the West Bank and Gaza judicial communities to work together.

The prior study's three conclusions and the associated preconditions are discussed below as overall constraints to ROL programming. These issues are also addressed in the report, as appropriate, in connection with the identified program options and other feasibility concerns and factors. The analysis provided below is a macro approach to the constraints and preconditions as being preclusionary to Mission consideration of ROL activities. The Feasible Options team recommends and has applied an approach to these preconditions that condenses them to the basic elements. We have taken this approach to facilitate decisionmaking and proceed to programmatic issues of immediate concern to USAID policy (and support) in the West Bank and Gaza.

A1. Political Commitment

Demonstrated political commitment to make improvements in the justice sector and clarify responsibilities and lines of authority within the judicial sector and legal community.

Previous situation. The lines of authority, as indicated in the 1996 DIS Report, were in transition as the Palestinian Authority gradually asserted its authority. The issue was particularly acute in the judicial sector where multiple legal systems were to be brought under the auspices of a single Palestinian entity. The minister of justice and chief justice of Gaza differed on who had the authority to decide judicial administrative matters, judicial appointments, and the composition of a judicial council. Exacerbating this situation at the time was the granting of partial ministerial status to the chief justice of Gaza by Palestinian Executive Authority Chairman Arafat.

In the West Bank, the status of the chief justice was not determined relative to the Gaza chief justice and the minister of justice. The attorney general in Gaza, who has subsequently been removed and replaced by the deputy attorney general, made several decisions on West Bank issues that were contested by West Bank legal professionals and raised the question regarding the attorney general's

responsibility to the minister of justice or the chief justices. Palestinian Executive Authority Chairman Arafat decided these issues.

Responsibility for implementation of judicial decisions by the police or civil service was unclear. At that time, implementation of judicial decisions was considered better in Gaza than in the West Bank due to the existence of multiple police and security forces in Gaza.

Current situation. The removal and replacement of the chief judge and attorney general in Gaza by the minister of justice and the requirement that West Bank jurists report directly to the Ministry has troubling ramifications for judicial independence. The chief justice in Gaza has been replaced and the current acting chief judge of the Gaza Court of Appeals is Mohammed M.S. Soboh. The attorney general in Gaza was replaced by Deputy Attorney General Sa'ad W. Shuhaiber.

The Ministry of Justice has assumed authority in the judicial sector. This conclusion is reinforced with the appointment of 10 new judges outside of the prosecutor ranks by the Palestinian Authority chairman, contrary to the established practice for judicial appointments. The Ministry of Justice is the *de facto* authority, and the legal authority cited for this reality by officials of the Palestinian Authority are the Accords of 1993 and the subsequent agreements with the Israeli and U.S. governments.

The Basic Law, which would establish the relationships between the three branches of government and serve as the basis for law until the establishment of a Palestinian state and the adoption of a constitution, was passed by the Palestinian Legislative Council. The Basic Law has not been signed by the Palestinian Authority chairman for reasons relating to the establishment of the Palestinian State, according to key Palestinian Authority officials.

The Judicial Law, which addresses judicial independence and the structure for administration of the judicial sector, is at the second reading stage in the Palestinian Legislative Council. It is anticipated that following eventual passage by the PLC, the chairman's signing of the Judicial Law will also be delayed. The draft law provides for a Supreme Judicial Council composed of the chief justice of the Supreme Court as president and three other judges of the Supreme Court as well as the presiding judges of the Appellate Courts in Jerusalem, Gaza, and Ramallah; the public prosecutor, and the deputy minister of justice. Appointment of judges is made by the chairman of the Palestinian Authority based on nomination by the Supreme Judicial Council. Judges cannot be dismissed, except in instances indicated in the law. The law provides that the minister of justice shall have administrative supervision over all courts. Disciplining judges at all levels falls under the jurisdiction of a Disciplinary Council composed of the two most senior judges of the Supreme Court and the most senior judge of the appellate courts who is not a member of the Council. The judges interviewed by the team expressed the opinion that the Judicial Law, when passed, would substantially strengthen and further the independence of the judiciary as well as provide needed supervision over the efficiency and competence of judges.

Until the Judicial Law is enacted or other action is taken by the Palestinian Authority such as a chairman's decree that establishes a Supreme Judicial Council, it appears that the Ministry of Justice will define the direction of judicial system operations and developments. An opportunity exists to affect the debate on judicial independence and further clarify lines of authority. Ignoring this opportunity could result in a further weakening of the judicial sector. A series of actions and program activities are offered in this report for Mission consideration.

Extent of commitment. Several levels of "political will" were assessed by the Feasible Options team. Various ranks of legal professionals were asked about their interest in ROL programming.

Interviewed were the Ministry of Justice and Palestinian Authority officials, members of the judiciary, prosecutors, private sector attorneys, law faculty, and law students. All identified particular areas of need which directly identified potential project activities for donor funding.

While there is support for various kinds of ROL programming, each group of respondents naturally identified project possibilities that related to their own perceptions of ROL shortcomings. The Ministry of Justice, the likely counterpart for judicial sector programming, and the Office of the Secretary of the Cabinet of Ministers indicated a great interest and willingness to improve the justice sector. The construction of new court facilities was identified as their highest priority and as a means to demonstrate commitment to justice. In general, respondents were supportive of rehabilitating or constructing new court facilities.

The basic question asked of respondents was, “what ROL programming would you like to see and why?” All had ideas. Only in the case of public defenders and legal aid was there evidence of any disagreement on programming. Two West Bank jurists, who had participated in USIS judicial training programs, expressed interest in public defender and legal aid programming. One attorney in Gaza cited that there traditionally is family support for providing funds and securing services of a paid attorney. The focus group of CSO attorneys and program directors in Gaza stated that there was a need and expressed unanimous support for legal aid and public defenders, especially for women.

In summary, the tone of the interviews with respect to political will or commitment was of strong support for ROL programming at all levels. Financial commitment from other donors, in the program areas identified by the Feasible Options team, is none or minimal. The opportunity exists to move forward with ROL programming in a changing and dynamic political, legal, and socioeconomic environment.

A2. Unification

Progress toward unification and modernization of the legal framework governing the structure and operation of the West Bank and Gaza judicial systems.

The issue of legal framework unification has several aspects. The administration of justice, for the foreseeable future, will be more fundamentalist in Gaza as contrasted to the West Bank (sometimes referred to as adherence to community standards). This would be the case even with absolutely uniform laws and court procedures. The struggle for uniform justice, in the face of community history and traditions, exists in all judicial systems. The administration of justice is so personally sensitive that jurists around the world have resisted publication of individual judges’ courtroom records to avoid being classified as liberal or conservative in their adjudication of cases. Where judges are responsible for court administration, individual courtroom procedures will be practiced and management and recording of cases varied. The worldwide movement toward encouraging formal and responsible court administrators over the past 30 years has resulted in more uniformity in case management and records maintenance. Uniformity in case decisions has remained the province of the case appeal process.

The laws and legal procedures of Gaza and the West Bank have similarities and differences stemming from cultural and historical developments. Both areas have systems that are basically akin to the European civil law systems, although Gaza is characterized as having retained more of the judicial traditions of the British Mandate period. The Feasible Options team observed a functioning judicial system in both Gaza and the West Bank. While many court administration problems do persist, cases are heard and eventually adjudicated. In interviews in the West Bank and Gaza, respondents indicated

that the differences in their systems did not adversely affect the day-to-day business of the court. The instances two years ago of the arbitrary application of Gaza law in the West Bank have not reoccurred. The Palestinian Authority has apparently recognized and practiced the principle of community standards.

A development that supports the eventual unification of laws and procedures in West Bank and Gaza is the legal database currently under development at the Bir Zeit Law Center. This database, in Arabic and English, displays legislation from both areas for specified legal issues and categories. This information has assisted legal researchers in developing new legislation.

Over the past two years there has been much activity in the drafting of national laws including the Basic Law, Judicial Law, Civil and Criminal Codes, and specific pieces of legislation such as the Investment and NGO laws. Major areas of difference should be addressed in this new legislation. It is expected that these Civil and Criminal Codes, projected to be drafted by February of 1999, will move the West Bank and Gaza closer together in terms of legal system unification. While differences remain between the two legal systems, the Feasible Options team did not see these differences as precluding or hampering development and implementation of the identified feasible ROL program options.

A3. Cooperative Relations

Greater willingness among the West Bank and Gaza judicial communities to work together.

In the 1996 DIS Report it was noted that the West Bank legal community expressed concern about "Gazan occupation" because the Palestinian Authority resided in Gaza as did the minister of justice, the attorney general, and the chief justice. At that time, there was resentment in the West Bank legal community against the Gazan legal community. In our West Bank interviews we asked respondents to comment on relations between the two communities. The answers uniformly were that there were no issues except for the minister of justice's recent instruction for all West Bank judges to report directly to the Ministry rather than to the chief judge of the Court of Appeals in Ramallah. The current issue is overall judicial independence rather than lack of cooperative relations. With regard to the issue of judicial independence, the West Bank and Gazan legal communities are united.

Due to travel restrictions, the judicial communities of the West Bank and Gaza have limited access to each other. They have, however, participated together in the recent training of judicial trainers program funded by USIS. Their relations there were cooperative regarding discussions on legal issues and the matter of which territory would hold the future judicial training conference.

The Palestine Bar Association has been formed by unifying the West Bank branch of the Jordanian Bar Association with the Gaza Bar Association. This unification is evidence of a greater willingness of the legal communities of West Bank and Gaza to work together. The Association has combined membership and jointly produced a quarterly law journal.

Joint drafting of national legislation is also a positive indication that the legal community is willing to work together. This drafting is accomplished by 12 West Bank and 8 Gaza attorneys and legislative specialists of the Palestinian Legislative Council's Legal Department working in tandem and with extensive cooperation between the separated territories. Since 1997 the Legal Department of the Palestinian Legislative Council, with offices both in Ramallah and Gaza, has been drafting and amending existing legislation to be presented to the Cabinet. Models from other countries are used and the specific goal is to unify the legal system of Gaza and the West Bank. Legislative specialists,

apart from the PLC, from both the West Bank and Gaza also have prepared initial legislative drafts. Law school faculty and the Bar Association also comment on and, in some instances, draft legislation.

In all of the interviews, the Feasible Options team found no evidence of an absence of cooperative relations between the West Bank and Gaza legal communities. The Feasible Options team concludes that the precondition of greater willingness among the West Bank and Gaza judicial communities to work together has been met and should no longer be considered an impediment to USAID-sponsored ROL programming.

B. Current ROL Projects and Donor Activities

According to the U.N. Office of the Special Coordinator in the Occupied Territories (UNSCO) ROL Development Assistance Survey of early 1997, more than 100 studies and ROL project components were compiled over the three-year period since the establishment of the Palestinian Authority in July of 1994. A substantial portion of these were completed studies and assessments of short-term training and technical assistance efforts. A major part of this assistance was approximately \$30 million for 10 completed projects in electoral system development, of which a large portion was supported by the U.S.

A major focus for international donors has been in law enforcement. Denmark, Germany, Sweden, and the Netherlands have contributed to the construction and equipment for the police academy. Funding for police training has been provided by Norway and the U.N. Centre for Human Rights. Penal institutional training programs have been funded by Norway. Equipment for a forensics laboratory, technical assistance, and training have been provided by Australia, Spain, and Sweden. World Bank funding is supporting unification and redrafting of the Civil and Criminal Codes as well as a review and revision of the legislation on criminal procedures.

After more than three years of planning, the World Bank loan to the Palestinian Authority for an ROL project will begin implementation in early 1999. The five components of this three-year effort, to be administered by the Ministry of Justice with some contractor support, are: 1) Unification and Development of Legislation (\$1.07 million); 2) Court Administration (\$1.52 million, Abt Associates); 3) Judicial Training (\$922,000, Bir Zeit University Law Center); 4) Alternative Dispute Resolution Mechanisms (\$660,000, Search for Common Ground); and 5) Legal Information (\$385,000).

The updated UNSCO ROL Survey of March 1998 reported a total of 20 current international donor supported projects for nongovernmental organizations (NGOs) and civil society organizations (CSOs). Half of these had multi-year budgets under \$20,000. The six largest donor-funded projects averaged \$1.2 million. These efforts are primarily for refugee rights, political prisoner rights, and human rights monitoring. There are a few current mental health, women's rights, juvenile counseling, and legal defense programs, and several completed programs for legal defense for political prisoners held by Israel. There are nine current public information development projects funded by the European Union and USAID. Human rights training has been provided by the UN High Commissioner for Human Rights/Centre for Human Rights.

Donor support to legal education has been in the form of grants to the Bir Zeit University Law Center. A \$1.4 million grant from the European Union has supported development of a computerized legal database of all West Bank and Gaza laws. The British Council has provided \$1.1 million to Bir Zeit to establish a Master's of Laws degree program in Women, Law, and Development. The

governments of France and Qatar contributed \$400,000 to the construction of the recently completed Bir Zeit Law Center building.

USAID/West Bank and Gaza has been supporting legislative drafting programming with the Palestinian Legislative Council, Ministry of Justice, and Ministry of Planning and International Cooperation. The World Bank, European Union, and the United Kingdom have also contributed to legislative drafting. Several donors provided technical assistance for the drafting of the Judicial Law.

Donor-funded efforts to date in the judicial sector have consisted of workshops for judges to discuss court-related issues, field trips to observe the U.S. system and attend workshops, and a program of training of trainers. The USIS, in addition to training for judicial trainers, has supported Bar Association development and community oriented alternative dispute resolution. The United States has been the only donor to be engaged in judicial sector development.

SECTION III

Feasible Options

The Feasible Options team recommends a comprehensive West Bank and Gaza Rule of Law Program comprised, at a minimum, of four projects or components that include Legal Education, Legal Professions, Judicial Sector, and Commercial Law. Additional possibilities for consideration are Rule of Law/Civil Society Organizations and Administrative Law. While these first four components could be implemented on differing time lines, the program would have maximum impact through a simultaneous effort. The interrelationships between the components reflect the existing reality and complexity of the legal environment in Gaza and the West Bank. By strengthening these relationships, the overall effect would be larger, synergistically, than the sum of the component parts.

International project development experience has indicated that the selection and active involvement of counterparts in project planning, implementation, and evaluation are essential for achieving mutual project objectives. Counterparts are offered for Mission consideration.

In the current legal setting of Gaza and the West Bank functioning ROL governmental and community organizations exist. The law schools of the universities and the Bir Zeit University Law Center operate under the Ministry of Higher Education. The Palestine Bar Association, ostensibly under the control of the membership, and Palestinian NGOs provide community-based centers of ROL involvement. The judiciary, while weakened in recent years, has experienced and committed judges willing to support judicial reform and stand for judicial independence. The Ministry of Justice, with close coordination by Palestinian Authority officials, is apparently sensitive to the Palestinian Legislative Council (PLC) and the judiciary, as well as to the community based organizations that question the extent of executive power. The Ministry for Trade and Economy (MTE) appears to be a major actor concerning commercial law reform.

While there have been significant developments in Gaza and the West Bank regarding the constraints identified in the 1996 report and the status of the Mission preconditions, many problems remain to be addressed to improve the ROL. We present six project concepts for Mission consideration and, in so doing, address problem areas and constraints, feasibility and political will, potential for early and visible impact, and general acceptability.

A. Legal Education and Law Schools

Until recently lawyers practicing in the West Bank and Gaza received their law training at universities located throughout the Middle East, including Jordan, Egypt, Morocco, and Syria. There are now three law schools in the West Bank and Gaza: Al Azhar in Gaza, established as a separate law faculty of the Islamic University in 1991; Al Quds, established in 1992 in East Jerusalem; and An Najah, established in 1994 in the West Bank. Law school graduates of these three schools can practice in either area as the legal system is considered as one. It is not clear if these new law school graduates are precluded from practicing outside of the West Bank and Gaza. Presumably, if apprenticeship requirements are met for the country, they would be allowed to practice. No formal accreditation exists within West Bank and Gaza or for law schools in neighboring Arab countries.

The size of the student body, academic standards, curriculum, and facilities of the West Bank and Gaza law schools vary considerably. Bir Zeit University Law Center was established in 1993 as a graduate institute. A brief description of each of these institutions will illustrate needs which will be addressed by this component.

The law school in Gaza, Al Azhar, currently has 2,000 students and 12 full-time professors. It conducts separate classes for male and female students and has no graduate or evening programs. The curriculum is traditional with some practical training afforded by teaching assistants. Because of the large number of students, classes are held until 8 p.m. There is no separate law library although a new library, financed by the French government, is planned which will have a separate law section. Neither faculty nor students have access to computer information technology, there is no ethics component, and skills training is inadequate. In the last class of 150 fourth year students, only 15 actually graduated. The law school is attempting to raise standards by increasing the passing grade. The quality of those graduating was strongly questioned by practicing lawyers in Gaza, one of whom established his own test for working at his law firm. Of seven applicants, only one passed this test. The low graduation rate also reflected the part-time nature of a sizable portion of the student body in Gaza. Many are police or security forces personnel. Students generally take more than four years to complete the curriculum. This is not the case at the two law schools in West Bank.

Al Quds University in East Jerusalem has 400 students, 15 full-time faculty, and 6 part-time faculty. It offers a day program and an evening program primarily for security or court personnel who wish to continue their education. It also offers a masters program primarily in Judicial Education and Public Law for approximately 25 students. A decision was consciously made not to offer a master's in commercial subjects because this was going to be offered at Bir Zeit Law Center. Al Quds has a forensic lab and a new building currently under construction which will include a moot court room. The dean and faculty are involved in civic activities such as legislative review and community outreach, through outside lectures and workshops. It has a library of 8,000 volumes but no computer information technology. It has not yet graduated any students.

An Najah Law School in Nablus will be graduating its first class of approximately 80 students this year. There are 600 students in all, and 12 law professors although some courses are taught by professors of other faculties. There is no graduate program. The physical facilities are new and quite adequate. A new, very impressive library will open in a few weeks. The library is for the university as a whole, but is quite large enough to house a law component. There is a need for books and research materials, however. The university has approximately 400 personal computers, and is expecting shortly to have full Internet access, and has the capability of providing in-house training, as it has a department of computer sciences. The computers are largely devoted to the scientific faculties, however, and the law school has only one. The curriculum includes some electives, but does not include any courses on ethics. Students stressed a need for additional specialized professors. The law school is eager for research materials, information technology, and faculty exchanges.

Bir Zeit University Institute of Law is primarily a research center and offers a master's program for approximately 25 students. The library contains more than 8,000 volumes, along with microfiches, CD-ROMs, and access to the Internet and international legal databases. The holdings are entered into the computerized MINISIS library system, which can be accessed from the Institute of Law and the main university library. A major ROL contribution is the legal database which includes references to all Gaza and West Bank laws. The database is in Arabic and English and is still being developed with images of all legislation to be added. Plans include placing the database on CDs and making the information available through the Bir Zeit Law Center Web site.

A1. Legal Education Subcomponents

The Legal Education Component would support the provision of a sound legal education utilizing modern information technology, incorporating relevant substantive areas such as commercial legal

training, providing skills training such as legal drafting, ADR, and emphasizing ethics and human rights.

Each of the three law schools has critical needs which should be addressed including: Information Technology/Library, Curriculum Development (with a focus on Ethics, Commercial Law, Clinical Education, and Human Rights), and Faculty Development (including skills training, English language training, and international faculty exchange programs).

There appears to be little ranking of law schools as is the custom elsewhere in the world, and none of the law schools in Arab countries is seen as a model. None of the law schools, ranging from Morocco to Jordan, has a reputation similar to that of an Ivy League law school. In general, Egypt is seen to have the most developed legal system and the respected, USAID- supported Egyptian Judicial Training Institute.

Information Technology/Library

Each law school's library is inadequate to support a sound academic program. Further, access to computer information technology via the Internet or through linkage with Bir Zeit is lacking. Therefore, the libraries of each should be augmented with updated texts, cases, and current legislation in English, Arabic, and other languages.

The database at Bir Zeit should be accessible through computers to both students and faculty throughout the West Bank and Gaza. In addition, students and faculty should have access to computers and training so that they might readily access legal materials. Faculty members interviewed have requested information technology. International experience demonstrates that once students receive computer training in legal research and practice application skills, these skills are carried into their professional practice, substantially upgrading the practice level.

The information technology subcomponent would expand the capacity of other ROL institutions through a phased introduction of information technology to improve legal information in the West Bank and Gaza. The subcomponent would initially focus on young legal professionals, current law students and new graduates, and receptive legal professionals at the PLC. Initial tasks would be to equip the law libraries and train personnel at the PLC and equip the law libraries of the three law faculties. PLC personnel could be given computers and computer training to access to the Bir Zeit legal database, CD ROM legal materials and the Internet as supplemental to the current training and technical assistance being provided by the USAID project for the PLC. Law faculty members would participate in specialized workshops on legal information and information technology. Faculty could then institute training courses for students.

This comprehensive component would coordinate and/or support legal database and readable formatting or Web site information access development with the Bir Zeit Law Center. Under the management of a U.S. contractor for the law school component, and with the partnership of the participating institutions, there would be certain returns to scale. Overall coordination and relevance of legal information development in both Gaza and the West Bank would also be enhanced. Expatriate and West Bank/Gaza technical specialists could be assigned to work within each participating law school for the period necessary to install equipment and train university personnel. The trained university personnel, faculty and/or information specialists, could then provide ongoing classes and training to faculty and students.

Web sites could be immediately established for ROL institutions, introducing current information technology and unifying institutions (bringing Gaza legal educators and law practitioners more in line with West Bank legal institution developments). Within a year or two, this experience can be transferred to the development of legal information systems appropriate to the judicial sector, as well as to civil society organizations and interested private individuals.

Curriculum Development

The law schools' curriculum requires further development. For example, ethics of the legal profession is generally a required subject in law schools throughout the world. This course has no counterpart in the law schools in Gaza and the West Bank. While general moral principles are taught, basic concepts such as conflict of interest, commingling of funds, and trust accounts are not taught. Therefore a separate course in ethics should be designed and offered.

The commercial component must also be strengthened. New laws are being enacted in this area that should be integrated, but due to lack of access to information technology or basic books, this area has received inadequate attention.

International human rights in the curriculum needs further strengthening. Further, it is anticipated that international human rights conventions will be adopted and students should be familiar with them. The UNHCHR has developed training programs and presentations for police personnel. The same program could be undertaken for the law schools.

Commercial arbitration and general alternative dispute resolution are missing from the current curriculum. These topics should be addressed, especially because they are seen as a need in the practicing community. Developing commercial law, overloaded court dockets, and consequent delays in court decisions require implementation of ADR processes and students must be prepared to work in this area.

Faculty Development

To access the bulk of legal information available through the Internet and information systems such as Lexis/Nexis and West Law, proficiency in English is required. Members of the law school faculty have requested English language training and such courses would be of great benefit.

Faculty development and opportunities need to be enhanced and broadened. A project component could thus be faculty exchanges. Law professors from other countries, primarily Arabic-speaking, could be invited to the law schools, and assurance has been given that they would be welcomed. In addition, local faculty could do research or lecture at other universities, thus enhancing both legal knowledge and language proficiency. The proposed Judicial Institute, as described in the Judicial Sector portion of this section, could provide continuing legal education training to faculty members.

Skills Training and Clinical Programs

Training in basic practice skills is necessary for the new legal professional. While there is now a two-year apprenticeship program required of law graduates, supervision and development of legal skills during the program is at best uneven and no uniform standards exist. Skills training should properly

begin in the law schools. Foreign experts could collaborate with local faculty to develop such skills training programs, including clinical programs utilizing simulation and role playing. A recommended topic is arbitration, an area that is becoming increasingly important in commercial law. There are also other possible links to the Commercial Law Component.

Bir Zeit University Law Center

The project personnel of the legal education component should cooperate and coordinate closely with the Bir Zeit Law Center. Access to and wide distribution of the West Bank and Gaza legal database, the development of which is currently funded by the European Union, would be a priority. Other activities appropriate for USAID funding for the Bir Zeit Law Center would include graduate programs in Administrative Law, Public International Law (Human Rights), and Criminal and Penal Law.

A2. Factors for Consideration

The legal education component would result in short-term and long-term strengthening of law schools in Gaza and the West Bank. Consequently, greater numbers of qualified lawyers would enter the profession and the court system. The longer-term expectations, in common with those of several other recommended components of a ROL program, would include a strengthened legal profession and the more efficient and equitable administration of justice.

With the implementation of the Legal Education Component, several classes graduating in one or two years will have been exposed to new law subjects such as commercial law and to accessing information technology for legal information. These new law professionals would be more receptive to technology and would encourage adoption of computers in the law offices and other legal and commercial employment settings. The introduction of commercial law and ADR concepts would be facilitated in the law school environment.

The counterpart would be the Ministry of Higher Education. A law school based committee of the four involved institutions might be established with the authorization of the Ministry of Higher Education. A Ministry official should be assigned to coordinate among the four institutions and to work with Component technical specialists who would support curriculum development, faculty development, and information technology/library development.

Of the six proposed ROL Components, Legal Education will be the easiest to implement in terms of component objectives, definition of subcomponents, political will, general acceptability, and counterpart interest and participation.

B. Legal Profession

The organized legal profession in the West Bank and Gaza suffers the effects of imposed legal systems and differences in legal structures. After 1967, Israel imposed a security court system in both the West Bank and Gaza. During the Intifada, a large segment of the legal profession in West Bank chose to boycott the legal system. Since 1993, legal professionals in the West Bank and Gaza have made adjustments as evidenced in the unification of the Bar Association. The Palestine Bar Association is taking steps to revitalize the profession and is eager for support in this area.

There are approximately 1000 practicing lawyers, and 300 in training in West Bank and Gaza. Earlier studies have suggested that perhaps only 20 of those practicing attorneys were qualified to deal with modern commercial and financial legal issues, a figure some respondents considered high.

Since the prior study in 1996 (DIS Report), the Bar Association has become unified and is attempting to work toward better professional standards and more unified laws and procedures. There is close cooperation between Gaza and the West Bank in this area. Bar Association officials noted in an interview that they cannot build a civil society without respect for law, and it is their goal to reach that end.

The profession suffers from a lack of developed professional standards, as well as information technology and libraries. After graduation from law school, a graduate wishing to practice law must pursue a two-year apprenticeship program without pay under the direction of a practicing lawyer. During this time, apprentices are required to attend some lectures, though there appear to be no written requirements regarding the subjects to be covered or the number of hours. The apprenticeship itself is completely unsupervised, and there is no bar examination, though the Bar Association is considering developing one. The apprenticeship is required only for lawyers who will be active practicing private lawyers, and is not required for those who will work in the government. When asked about ethics training, one lawyer told us that he learned what his mentor told him, but had no idea whether that was, in fact, an appropriate standard of practice. While some practicing lawyers were recently disbarred, according to Bar Association officials, there is no organized process for disbarment and no provision for other types of discipline.

There is also no requirement for, or even provision of, continuing legal education. Though lawyers may attend the lectures presented to the apprentices, they apparently do not avail themselves of the opportunity. Some lawyers expressed a reluctance to attend training programs, because they are seen as demeaning. The Bar does participate in drafting and workshops on law development in certain areas, such as the draft laws on the judiciary, the Bar Association, and the Basic Law.

B1. Legal Profession Subcomponents

Bar associations or lawyer associations traditionally set the standards for admittance into the legal profession, establish codes of conduct, and provide continuing legal education to help the legal profession acquire new legal information and practice skills. The Palestinian Bar Association has received some assistance from USIS in conjunction with the American Bar Association. Several representatives of the then-separate bar associations attended programs in Washington in 1996 which did lead to unification of the bars in August, 1997. There is a planned program in Gaza and the West Bank for December, 1998. The USIS program is quite small, however, and assistance to strengthen and improve legal representation is critical to developing and ensuring the ROL. The Bar Association's offices house small libraries; they do not have computers for research or Internet access.

Major activities of the Bar currently include maintaining the membership roster, responding to requests to review draft legislation, membership information primarily through the quarterly law journal, review of the apprenticeship program, and admittance of new members. The legal profession component should contain the following elements: Information Technology/Library, Ethics Development/Training, Formalizing Apprenticeship Program and Bar Exam Development, and Continuing Legal Education.

Information Technology/Library

No significant information technology resources are available to the Bar Association. This hampers communication between the West Bank and Gaza, and also is a barrier to a library which is capable of being used for significant research. The number of books is small and inadequate for legal unification and related research purposes.

The Bar Association has been requested to review and comment on new legislation. Upgrading their small libraries and providing equipment for Internet searches and access to legal information in other formats would support the Association's ability to conduct research and provide comments to legislative drafts. In coordination with the legal information/information technology subcomponent of the Legal Education Component, the Feasible Options team recommends that an assistance program be provided to the Bar Association in this area.

Ethics Development/Training

This is a recommended component of any program to be provided in conjunction with the Bar Association. As new laws are developed, particularly in the commercial area, and as commercial law develops, it is imperative that a code of ethics be developed to regulate the practice of law. Once developed, training will also be necessary in ethics.

Formalizing Apprenticeship Program and Bar Exam Development

As noted above, there is a strong need for development in this area. In addition to the problems mentioned above, the requirement that an apprentice work for two years without pay and without requirements on the part of the practicing lawyer can lead to exploitation of the apprentice. A formal apprenticeship program should be designed with input from other countries which employ this method of bar admission.

Elements could include a fund for paid stipends for selected interns, placement of interns in the judicial sector to act as law clerks to judges, and apprenticeships served with prosecutors or public defenders with participating CSOs. The information base on Palestinian legal professionals could be expanded with surveys of legal professionals, analyses of available Bar Association data, and collection of primary information on attorneys in the business sector.

Since legal education in Gaza and the West Bank is undergraduate, as is the case throughout many parts of the world, the mandatory apprenticeship program is considered an integral part of legal education training and should be linked with or integrated with the law schools. Thus, law schools should be consulted or provide mandatory additional training during the apprenticeship period under the administration of the Bar Association.

Lawyers should be required to pass a bar exam before admission to the bar, to help raise professional standards. As it stands, apparently the requirements for obtaining a law degree vary considerably and are questionable at some institutions. There are no set requirements of apprenticeship, and no exam is required to practice.

A bar examination is key to ensuring professional standards and must be carefully drafted and administered. Elements of that examination could also be addressed in the law school curriculum. The experience in exams as administered by the previous Bar Associations in West Bank and Gaza proved that the bar exam in the past was not an effective measure. Technical assistance to develop an appropriate exam is needed and would be welcomed by the Bar Association. Such an action may also require adjustments to the current two-year program of apprenticeship and could reduce the unpaid

intern time period. This issue would be addressed in the design phase and would take into consideration the total Bar Association program of quality control, along with CLE, ethics, and a code of conduct.

The area of requirements for law graduates who go on to work for the government, who currently face no further requirements beyond an undergraduate law degree, should be explored, particularly in light of the varying levels of graduation standards. This area would also include development of standards for continuing admission and a disciplinary process.

Continuing Legal Education

The provision and requirement of continuing education for lawyers is necessary to maintain a Bar Association capable of practicing in a changing environment. As new laws are passed, as Palestinian law becomes more unified, and as commercial law develops, particularly in the international arena, lawyers will have to enhance their knowledge and skills. The Bar Association can serve a valuable function to the legal profession in the area of continuing legal education. The idea of requiring continuing education is a new one, however, and would require careful and sensitive planning and project design. As lawyers with the skills and expertise to represent important clients develop their practices, it should become evident to others that continuing education can benefit their own effectiveness and economic standing.

Continuing legal education could range from a somewhat expanded law journal and newsletter to the provision of extensive legal education classes and the publishing and sale of related materials on new legal developments. Continuing legal education should address, at a minimum, commercial law developments, international human rights, alternative dispute resolution, English language, computer skills, and ethics.

B2. Factors for Consideration

The four subcomponents described above would offer a comprehensive program to strengthen the legal profession. Each could conceivably be undertaken individually, but to do so would leave important gaps. Based on our interviews, it appears the strongest needs would be to formalize the apprenticeship program and develop the area of bar admission requirements. Providing additional educational opportunities to existing lawyers is also a high priority.

The development and administration of a more formal apprenticeship program, introduction of ethics training, operation of an expanded law library, and instituting a continuing legal education program would require additional Bar Association staff and related decisions to increase Bar Association revenues.

The Palestine Bar Association has been formed by unifying the West Bank, Jordanian, and Gaza Bar Associations. This Bar Association can serve as the counterpart organization for the Legal Professions Strengthening component. A nine-member board of directors now governs an active organization of approximately 1,500 members. Several members of this board have expressed interest in participating in a project to strengthen the profession.

The Legal Professions Component can be implemented with relative ease. The Palestine Bar Association is the natural counterpart and bar officials have expressed interest in participating in the project. Subcomponents are fairly straight forward. The major issue would be development of a

formal apprenticeship program and instituting more formal bar admittance procedures to possibly include a bar examination.

C. Judicial Sector

Approximately 60 judges in Gaza and West Bank today serve an estimated combined population of more than two million. In contrast, there are 454 judges in the Supreme Court, District Courts, and Peace Courts in Israel for a population of approximately 6 million. The growing backlog in West Bank and Gaza is estimated by several respondents at more than 80,000 court cases and average civil case-processing time reportedly can exceed three years. Court records are manually maintained and statistics are not generated from the files.

The Feasible Options team found that case backlog would warrant a further investigation of the possible benefits of ADR mechanisms as part of an integrated program to modernize the judiciaries of the West Bank and Gaza. There is an absence of clear baseline data with respect to the types of cases which comprise this current back log. Information from interviews indicated that there is no clear difference between the types of cases which are delayed and those which may simply have been postponed or continued as part of the court's normal, and often lengthy, operating procedures. There is also no clear vision on the potential benefits of ADR mechanisms by those most likely to benefit from the creation of such a system.

Given the absence of a secular Family Law/Code, most community and/or family matters are still resolved by community committees known as Legan Al Islah. These committees supplement the Shari'a Courts, which have jurisdiction over an array of family law issues such as divorces. For this reason, the team does not recommend that USAID initiate the development of a community- based ADR system at this time.

With respect to commerce, respondents were nearly unanimous in their belief that the current court system is unable to efficiently address the complex new cases coming before it such as enforcing new banking regulations to resolve complex international transaction disputes. A special drafting committee recently finalized the first draft of a new Palestinian Arbitration Law comprised of 50 articles and based on Yemeni Law. In addition, private proposals are being presented to donors to establish a Palestinian business arbitration center to handle both local and international commercial disputes. A small component of the World Bank project also contemplates the creation of ADR mechanisms to resolve commercial disputes. While not a substitute for an efficient and effective judicial system, ADR mechanisms in commercial law would provide another source of highly skilled and more efficient dispute resolution in those topics most important for the commercial development of the West Bank and Gaza.

There are serious questions, in today's West Bank and Gaza political context, about the true independence of the judiciary. According to respondents inside and outside of the courts, the quality of judicial talent must be improved. Legal education, especially in technical skills and legal specialties, is generally seen as inadequate. Judges have little knowledge of commercial and economic considerations relative to the workings of a free market.

The Feasible Options team heard regularly that low judicial salaries, in particular, are a main impediment to improved judicial performance and to the seeking of places on the bench by qualified younger lawyers. In addition, many courthouses are antiquated and both court administration and caseload management suffer from a lack of modern information technology.

C1. Judicial Sector Subcomponents

The Feasible Options team recommends immediate efforts to provide technical assistance to strengthen the judiciary. The objective would be to improve the court's administrative capacity to deliver service through an array of technical and substantive training activities within the judiciary's current mandate. Such an effort would greatly improve the judiciary's ability to manage current caseloads, address substantive and qualitative shortcomings and refine its image as a provider of a quality public service. The result would be to strengthen the judiciary and to contribute greatly to its independence before basic and enabling legislation is enacted.

Judicial Institute

There is a glaring need for judicial training and the creation of a Judicial Institute is recommended. When respondents were questioned about prospective curriculum and instructors, a universal response was that they should possess a core understanding of the developing Palestinian legal system. The donor provided training they had attended had little impact besides offering them a chance to make new contacts or the opportunity to travel to a host country for further "studies." When asked how they would like to see things done differently, the suggestions included formal and informal linkages with judicial training centers throughout the Arab world, a curriculum based on the common elements of civil and common law traditions rather than on one system or the other, a desire to have lectures in Arabic, a request that Western projects include professors of Arab descent, and a desire to be trained to assume training duties and acquire self-sufficiency as quickly as possible. The issues to be addressed include curriculum development, faculty, location of interim and final training sites, building requirements, cooperation/coordination for funding of facilities construction, and institute management.

Given the broad training requirements for the judiciary, the Institute must be prepared to offer a diverse array of training programs for all levels of the judicial sector. Most notable is a need to provide training in commercial law and legal ethics. A tiered training program for key actors within the judicial sector would include programs for current judges, incoming judges (be they political appointees or former prosecutors), current prosecutors, and administrative staff.

A training center would go a long way toward establishing a center of excellence to strengthen the legal reform movement, improve substantive and technical skills, foster the unification of the legal system, and encourage interaction and exchanges between the judicial sectors of the West Bank and Gaza. A Judicial Institute would also contribute greatly to donor and donor agency cooperation and coordination by providing a common base in which a wide array of experts worldwide could share its expertise.

The Institute's program could be supplemented by field trips to other countries and specialized conferences, workshops, and training programs as funded by other donors, including the World Bank. The three-year judicial training program as funded by the World Bank loan and conducted by Bir Zeit University Law Center will be engaged in curriculum development when it begins activities in the near future. The major difference is that the Institute would be the formal institution charged with the ongoing preparation of judges for their expanded tasks within the judicial system. As a formal institution, coordination with other donor offerings and training programs can be ongoing to complement the Institute's efforts and avoid potential overlap of programming.

Strengthening Court Administration/Model Courts

Court administration technical assistance must be separately addressed. Court administration was identified as a primary need which affects not only the ability of the judiciary to function but also to improve its public image and establish some degree of independence. There is ample literature on the link between judicial independence and judicial administration. The inability of the West Bank and Gaza judiciaries to efficiently manage operations and improve public image has a clear impact on their ability to strengthen the judicial sector's independence.

The strengthening of court administration in the West Bank and Gaza will go beyond the traditional measures of administration such as budgeting and finance. This may tend to create hostility and mobilize opposition from ministries currently carrying out such tasks. For this reason, the emphasis would be on reducing case processing time and providing timely justice. Records maintenance and access would be improved through the introduction of procedures and records technology. The court administration project in the West Bank and Gaza would focus on assisting the public to receive timely and fair hearings, improving the court's image with the public, promoting the perception that the allocated resources (including equipment for information technology) were not wasted in the court system, and providing judges with the basic tools required to resolve cases.

Equipment will be required for the following court administration activities: legal research, copying, word processing, printing, and records management. The court administration project activities would improve the efficiency of the judicial process through streamlining court procedures, clarifying job assignments and tasks, identifying successful local innovations which might be replicated, handling evidence, providing administrative support to judges, improving caseload management, improving information and file management, and improving courtroom operations.

The Feasible Options team recommends that consideration be given to the creation of a new model court or courts rather than to provide, solely, a technical assistance activity. While potential pitfalls may exist, creating a new pilot court from scratch would provide a locally created model from which other assistance projects could test techniques and develop new strategies. This approach would provide not only a dynamic technical assistance vehicle but also improve the judicial sector's self-esteem and external image, quickly resulting in a strengthened judiciary. Although traditional USAID court administration projects have worked from within existing systems, the Palestinian judiciary lacks a frame of reference with respect to modifications and has a unique political environment along with travel restrictions. Model courts, as an effort to improve court administration, could provide the dramatic impetus to galvanize resolve and introduce modern court technologies and procedural innovations.

The objective of the model courts activity is to improve timely justice and case resolution. The model courts would demonstrate the results of improved court procedures and case processing. Court management information would be generated from the new records systems. In the project design phase, the current practices and legislated constraints to improved court administration can be investigated. Additional activities may be required to introduce appropriate court procedures and may include new legislation. Related activities such as summons and enforcement can also be considered during the design phase. If the objective of improved justice is achieved through the Model Courts, the new practices and technologies could be generalized to other courts.

Judges' Association

The development of a unified Judges' Association is recommended. Given the judiciary's current situation, an association in the West Bank and Gaza would be able, at a minimum, to lobby for higher salaries and contribute to an improved profile of the judiciary. Ultimately, the association could also

work to facilitate a series of internal regulations, ethical guidelines, educational policies, and even removal procedures.

The Judges Association would be a membership organization comprised of all judges. There would be no formal relationship of such an association to the Supreme Judicial Council. According to the Draft Judicial Law, such an association is not precluded.

The majority of judicial respondents recognized the eventual need for an association although they did not see an immediate need. Respondents noted that an association might be perceived as encroaching on the jurisdiction of the fledgling unified bar association or the proposed Supreme Judicial Council but recognized its value once the other two institutions are established. It was also apparent that very little thought had been given prior to our meetings on the way to create an association. Limited work to educate members of the judiciary on the practical implications of establishing such a body is recommended. Technical assistance can then be provided to establish a judges' association.

Prosecutors Subcomponent

Prosecutors, as officers of the court, have historically been considered an integral part of the judicial sector in West Bank and Gaza. The imposition of the Palestinian Authority and a Ministry of Justice on this sector has complicated this relationship. The attorney general in West Bank and the deputy attorney general in Gaza now report directly to the Ministry of Justice and not to the chief judges.

The West Bank attorney general and the Gaza deputy attorney general expressed similar needs for their offices and personnel. These included libraries separate from the court libraries and legal information technology, office equipment including copiers and word processing equipment, and training for prosecutorial personnel.

The Judicial Sector Component, as a comprehensive effort, should include prosecutors' needs for legal information technology, modernization of court procedures and record keeping, training needs in conjunction with the Judicial Institute, and space requirements in any renovation or constructing of court facilities.

Judicial Sector Facilities Construction/Renovation

Respondents regularly made the point to the team that courthouse construction and renovation are badly needed throughout the West Bank and Gaza. This has generally been seen as a low priority for USAID financing in contrast to needs for essential judicial training and effective court administration procedures and equipment. The courthouses visited, while antiquated, are indeed operational and are conducting the business of the court. Significant courthouse construction work would likely prove quite expensive in comparison to the other programming alternatives.

Negotiations could focus on Ministry of Justice concessions regarding a degree of judicial participation in the planning of construction and renovation consistent with current and projected court requirements. The Feasible Options team received the impression that fairly large-scale and grandiose structures would be preferred by some officials on the argument that the new courthouses be symbols of authority. The European Union expressed some interest in considering the financing of the construction of necessary courthouses once legal sector institutional strengthening were underway and a willingness and ability of the Palestinian Authority for improved court modernization were demonstrated.

Courthouse construction to broadly meet the facilities requirements in both the West Bank and Gaza would require an analysis of court workloads by location and consideration of general public access to the courts. These issues should be addressed in the design phase and have ramifications for the location of possible model court sites. Any construction undertaken by the Mission should consider the proposed model courts subcomponent and the potential to improve case processing and procedures prior to location into a new facility.

Consideration can also be given to constructing or renovating a facility for the Judicial Institute. A major issue would be the number of locations and site(s). A final decision may be based on a balance of locations of new judicial and related governmental facilities.

C2. Factors for Consideration

The exact nature of the Judicial Sector Component, subcomponents, and activities will require careful analysis, planning, and definition particularly with respect to assuring sustainability. It will require an early commitment of the Ministry of Justice as the counterpart organization and the judicial sector to provide key personnel and implement successful elements of the model experience. In addition to improving court management at one or two sites and providing an analytical environment, such an approach would also address requests throughout the judicial sector for an immediate and visible impact.

The Judicial Sector Component has the greatest potential for long-term impact on ROL in West Bank and Gaza. The result depends upon the magnitude of resources allocated; dedication, commitment, and technical expertise of expatriate project, local hire project, and partner personnel; and degree of complementarity and coordination achieved with the other ROL Components and other international donor efforts.

In the USAID experience in court modernization and improvement, successful project implementation requires a substantial degree of patience and persistence. The major factor is the provision of training to court personnel that affects attitudes, behaviors, and technical skills in almost equal parts. Progress tends to take place as a series of plateaus prior to breakthroughs.

The development and implementation of improved court procedures is also one that requires a highly tailored approach. Judicial culture and tradition should be accommodated in a fashion that makes change and innovation acceptable to jurists. This process is more complex in the Gaza and West Bank environment of secular, religious family, and customary law.

The selection of the operative counterpart is also sensitive since the Ministry of Justice has assumed basic control over the judiciary. Judicial independence remains an issue even without encouragement from outside the present system. Judges will need to be involved in order to have any progress in the modernization of court procedures. Without a basic understanding and accommodation between the Ministry of Justice and the current cadre of experienced and dedicated jurists, progress toward project objectives in the Judicial Sector Component will be affected adversely.

Of the six proposed ROL Components, the Judicial Sector Component has the highest potential for impact and also the highest degree of risk. In addition to specific counterpart agreements and a well-defined work plan for implementing project subcomponents, explicit and ongoing monitoring and evaluation will be required to assure that adjustments are made to meet changing judicial requirements and opportunities.

D. Commercial Law

There is a significant absence of the legal and regulatory mechanisms necessary for the effective functioning of a modern market economy in the West Bank and Gaza. Commerce and free enterprise is a major public concern. A focus group interview held by the Feasible Options team with four West Bank citizens indicated that the legal structure was not conducive to open markets. Monopoly, import and export restrictions, and related commercial law concerns were seen as areas needing regulatory reform. Commercial law is also directly related to the Mission Strategic Objective of expanding economic opportunities for Palestinians. Specific important problems identified are summarized below:

- Lack of anti-trust legislation and the consequent significant monopolization of the economy;
- Antiquated and limited laws concerning Intellectual Property Rights (IPR), when combined with weak enforcement of IPR laws, result in a significant disincentive to companies considering investment or other transactions in the West Bank and Gaza;
- A weak and inefficient system of commercial registry which denies a company's suppliers, prospective investors, and others important information about a company's status and denies the company itself the opportunity to register and protect its IPR and other important rights;
- The absence of a strong and reliable system of commercial arbitration which increases both the transactional costs of resolving contract disputes and also contributes significantly to the backlog (about 3-4 years) in concluding a litigated case;
- Lack of qualifications and experience in the legal profession and judiciary to address the legal aspects of economic and financial issues of new commercial laws;
- The absence, throughout the sector, of modern information technology so that many potential transactions are either not consummated or are poorly considered due to missing or inaccurate data;
- The difficulty of creating and perfecting security interests which limits the ability of a company or an individual to buy, sell, or otherwise maximize return on assets through mortgaging assets or borrowing money;
- The difficulty, especially in the West Bank, of securing clear title to land through registration which impedes the rapid sale of land and/or the borrowing against land as collateral.

There are several ROL impediments to the efficient functioning of the West Bank and Gaza market economy which can be addressed through a commercial law component. These include weakness or non-existence of commercial laws, lack of enforcement of existing commercial laws, and the need for training of legal professionals and jurists in commercial law. The Feasible Options team recommends a multi-subcomponent Commercial Law effort to include review, coordination, and cooperation in drafting commercial laws and regulations; technical support and cooperation for the presentation of commercial law workshops and training; and the establishment of pilot or demonstration projects for selected commercial law development and implementation concerns.

D1. Commercial Law Subcomponents

Three subcomponents are recommended for inclusion in the Commercial Law Component: commercial law legislation, commercial law education/training, and pilot projects. Commercial Law is a cross-cutting issue and technical assistance, along with cooperation and coordination, could be provided to the other ROL Components.

Commercial Law Legislation

A technical support unit could provide assistance to the Legal Department of the Ministry of Trade and Economy in review, revision, and drafting commercial law legislation, assuming that this Ministry still plays a role and is involved in commercial law legislation. Specialists can be brought in to provide guidance and model legislation on issues such as World Trade Organization (WTO) accession and intellectual property rights, anti-trust, commercial registries, commercial arbitration, and land ownership registration.

Commercial Law Education/Training

In cooperation with curriculum development and presentation of training of the other ROL components such as legal education and legal professional development, specialists in commercial law could be available to provide technical assistance and specialized knowledge. Other audiences could be targeted such as Ministry personnel, membership of business associations, and personnel of interested CSOs.

Pilot Projects

Demonstration or pilot projects that support development and understanding of commercial law should be undertaken. The pilot project support would allow a smaller scale of activity and the intensive and explicit review of constraints, issues, and project results for subsequent general adoption or adaptation to other areas in the West Bank and Gaza. Training would be provided to counterpart personnel engaged in the pilot projects.

- A pilot project for *land registration* could be started in the West Bank. Land registration is a constraint in the West Bank and presents an opportunity to support improved secured transactions and access to financing. The pilot project approach could result in innovations for improving land registration.
- The team recommends strengthening the enforcement for violation of commercial laws. A demonstration project could be instituted in an office of the attorney general to prosecute commercial crimes. Such a "*white collar crime unit*" would develop and explore prosecution methods for use in other prosecutor offices.
- The establishment of a *Business Facilitation Center* could provide reliable commercial sector and commercial law information to support international investors and Palestinian entrepreneurs regarding legal requirements for the establishment and conduct of business. Such a center could conceivably be operated by a CSO or business association.
- The establishment of an *ADR or Commercial Arbitration Center* can be initiated. Commercial arbitration addresses a direct commercial law need that could be undertaken at a single or dual sites.

D2. Factors for Consideration

The Feasible Options team recommends that a multi-disciplinary team design the subcomponents and configuration for the Commercial Law Component consistent with Mission requirements. The appropriate counterpart or counterparts may include the Ministry of Trade and Economy, other ministries, and/or Civil Society Organizations such as business associations. The extent of flexibility for cooperation and coordination among potential counterparts or partners should be explored. The design team would recommend the implementation mechanisms consistent with subcomponent requirements. Included for consideration would be the Commercial Law Development Project of the U.S. Department of Commerce, a single contractor or consortium, or multiple contractors. Subcomponents may be separated for phased implementation to include short-term delivery orders and long-term competitive procurements.

The Ministry of Trade and Economy could be included as the counterpart for Commercial Law to allow for broadened participation and cooperation with the other Ministries and organizations serving as counterparts in the ROL Program. To the extent that the Ministry of Trade and Economy is engaged in writing commercial legislation, the Technical Support Unit would provide direct support to the development of commercial law reform, including the package being addressed through World Bank funding. Information collected by the Feasibility Options team indicates that all new laws are not subjected to an intensive technical and special interest review. The extent to which commercial laws are being developed is not certain. Progress in the development of commercial laws, accordingly, may be quite limited. A targeted effort of technical assistance on specific pieces of commercial legislation would support Mission efforts in the financial sector. The development of new commercial laws would benefit from a broader technical participation in the process.

The Feasible Options team recommendations on commercial law are consistent with those proposed in previous USAID reports which include the Maria Linares and IRIS reports. The Linares report also recommends establishing a Technical Support Unit in the Ministry of Finance to focus on negotiable instruments, trust law, and accounting and auditing standards. Support to strengthen business associations and private sector-controlled think tanks is also proposed. Recommended activities that are addressed in the other ROL Components include regulatory reform, streamlining and automating manual procedures at model courts, training on legal information access through computer technology, and provision of workshops and training courses in commercial law for new and experienced judges.

A multi-person expatriate and Palestinian Commercial Law Component implementation team, with expertise in a range of commercial and private sector disciplines, could be based at the Ministry of Trade and Economy. Over the project period these specialists would, from their MTE base, work with MTE and also with practicing lawyers, law professors, and others to promote and stimulate positive change in such areas as anti-trust, ADR, and IPR. Commercial laws and regulations, existing or proposed, would be reviewed and technical assistance provided as appropriate. Seminars and workshops on commercial law would be offered.

In the important field of information technology, the Feasible Options team suggests that the sector assistance should emphasize the full availability of legal information through law libraries and computer access to legal databases. In addition, sector support can help develop law school curricula that encompasses commercial law needs, with cross-utilization of lecturers among law schools and other organizations including the Bar Association and ROL CSOs.

The Commercial Law Component can have a lasting impact on the caliber of the writing of commercial laws. By providing specialists with working experience in the application of law in areas

such as IPR and World Trade Organization accession, this Component can make substantive contributions. While such technical expertise can be provided, laws will be written within the give and take of the West Bank and Gaza political, cultural, and legal environment. Project personnel, experienced in this process, would be more effective than those with a more normative approach.

Project results will be measured in terms of legislation passed and personnel trained in commercial law. The eventual impact on the market economy will be real, depending upon the quality of the Commercial Law Component services, and difficult to measure. Future investors in the area will profit by an effective commercial law effort and progress may also be evidenced in related Mission efforts to develop capital markets in West Bank and Gaza.

E. Additional Project Concepts

The above four project concepts, encompassing the total legal profession sector and commercial law are proposed as the primary project concepts for Mission consideration. The Feasible Options team collected information on other possible project concepts. The following two components are considered as areas for Mission consideration given developments in the feasibility of supporting administrative law and the potential for expanding the Mission's existing program with CSOs in the West Bank and Gaza.

E1. Administrative Law

Administrative procedure laws are necessary for transparency and accountability of public agencies, and for citizen participation in government. While it is clear that new laws under consideration provide for procedures for legislation enactment and publication, the area of administrative procedures has essentially been ignored. Because new ministries and authorities are being created, the number, importance, and legal impact of regulations must be addressed. Regulations affect the citizen often more directly than legislation, therefore there must be assurance of transparency, citizen participation, and adherence to the ROL.

There is a strong need for development of laws regulating the public sector and the implementation of government policies and practices. A responsive and professional bureaucracy is necessary to instill citizen confidence in government. A code of ethics and anti-corruption laws for government and adequate training of civil servants are necessary.

New ministries and new authorities, such as those dealing with public utilities, are being formed. There is no law that describes either the authority or composition of these public entities. Furthermore, law is needed that sets forth procedures for these bodies to adopt and implement regulations; assures citizen involvement in that process; provides that information be made public; allows for citizens to effectively challenge government decisions; and assures ethics in government.

The result of these gaps is that public agencies can operate arbitrarily and can establish regulations without accountability, consistency, or public input. There is no effective way for a citizen, or even a lawyer, to determine what requirements or procedures an agency may impose. The government largely acts through agency regulation, not statutory law, yet without laws regulating public administration, there are absolutely no guidelines or constraints on the process of developing or implementing these regulations. An example was related by a practicing lawyer in Gaza, who attempted to register a product with the Ministry of Health. He learned that there were more than 30 general managers within the ministry and went to 21 of them in an attempt to register the product, all of whom denied any responsibility. It was only on direct intervention of Palestinian Executive

Authority Chairman Arafat that he was finally able to accomplish his purpose. With effective laws on public administration, this situation would not arise, as the function of the ministry would be described, at least in regulation. Furthermore, if a dispute arose as to the registration of the product, there would be a means to resolve it.

To address the needs and issues regarding administrative law regulating the public sector and the implementation of government policies and practices, a four-subcomponent project to improve administrative law might be considered. This is outlined below.

Law on Public Administration (Administrative Procedures Act)

In conjunction with the Palestinian Legislative Council and the Palestinian Authority, a new Law on Public Administration and Administrative Procedures should be developed. This law should include, at a minimum, the following: definition of entities such as authority, unit, and agency; definition of rules, regulations, and decrees; procedures for adopting such rules and regulations, including notice and provision for citizen participation; requirement of publication of regulations and other agency action; appeals procedures, including scope of agency review, attorney representation, and procedures for judicial review; and procedures for access to agency records.

Freedom of Information

A citizen's access to government documents is critical to ensure transparency and accountability. Certain types of documents must be kept confidential for reasons of national security or to protect a person's privacy. Currently, the decision whether to release documents rests with the public official in charge; a gatekeeper situation which can lead to an abuse of authority and unreviewable decision-making. Establishing the right to obtain public records is critical to accountability in government.

Development of Code of Ethics for Public Administration

A code of ethics for public administration should be drafted in conjunction with the PLC and the PA. Several models now exist for a code of ethics for civil servants in the United States and throughout the European Union, as well as in the emerging democracies. These models should be examined with foreign and local experts to develop an appropriate code of ethics for public administration. In addition, workshops on ethics including simulation and role playing for civil servants should be conducted. Instructional materials should also be prepared and disseminated throughout the ministries.

Development of Civil Servant Training Programs

A law on civil service was recently drafted. Training programs will be necessary to assure an efficient and responsive bureaucracy. Training programs and workshops should be conducted in such areas as management, skills development, and public responsibilities.

Factors for Consideration

Each of the above subcomponents should be considered for inclusion in a project on administrative law reform. They can be separated to some extent and limited in scope consistent with assuring feasibility. Prior to development of a full administrative procedures act, work could be done to clarify and specify the functions and responsibilities of all government offices. Work on a freedom of information act could be separated from the other components, as could civil servant training in some areas.

The legal departments of the ministries would benefit from exposure to administrative law from the viewpoint of supporting the transparent and orderly administration of government regulations. Such training could also focus on corruption and ethics. An administrative procedures act is still necessary. The Mission may want to consider public administration as a related program possibility in support of SO 3, encouraging the establishment of a functioning and accountable system of governance that is seen to be responsive to the needs and expectations of the Palestinian people.

Although this need exists, there are significant constraints to rectifying the situation and perhaps lack of political will to do so. While administrative policies and procedures are necessary for the ROL, an administrative procedures act to some extent limits government control. With the role and power of an agency spelled out, the government loses flexibility to act without constraints, for example, in areas such as hiring and firing and promulgation and implementation of regulations and orders. The concept of reform in this area was received by some respondents with skepticism. Reform in this area is desirable and, in the end, necessary to the ROL.

While administrative law is important to the ROL, especially with respect to the interface of Ministry services and public relations, undertaking this component at this time would require more effort and risks than any of the other proposed ROL components. Additional analysis would be required to determine the extent and nature of the constraints. There is no natural advocate for administrative law or perceived need for administrative law on the part of the Palestinian Authority officials interviewed. An informed civil service commission or strong support from the Cabinet of Ministers would be necessary to undertake reform and development of administrative law. Progress in this arena would impact substantially on other Mission undertakings including banking and securities law and regulations.

E2. ROL/Civil Society Organizations

According to the U.S. Department of State *Report on Human Rights Practices in the Occupied Territories* for 1997, human rights abuses are widely practiced by Palestinian Authority security forces. Detainees have been tortured and died in prison. A member of the Al Quds Law Faculty who provided human rights training to police personnel in the West Bank was told by the participants that human rights is a western concept and alien to their beliefs and practices.

The report notes that the minimum working age is 14 years, and a significant number of children under the age of 16 are working. Many are under the age of 12. Such employment is generally on family farms and businesses although employment of children in small manufacturing enterprises has been reported. The law does not specifically prohibit forced or compulsory work by children. There is no juvenile court system, although some judges do specialize in juvenile cases. Judges do have the discretion to remove children from situations deemed harmful, but the justice system is not structured to afford such protection to children.

Women in the West Bank and Gaza suffer from rape, domestic violence, and violence related to “family honor.” No reliable data exists on the incidence of violence against women. Societal

pressures prevent most incidents from being reported and victims are encouraged to remain quiet. Cases are reportedly dealt with informally by family members. Women are under-represented in most aspects of professional life including government and politics. There are five women in the 88-member Palestinian Legislative Council and with the resignation of Hanan Ashwari in August, 1998 only one woman who serves in ministerial-level positions. There are at least two women judges in Gaza and no women prosecutors, from whose ranks customarily come the judges. One female Palestinian attorney in the West Bank who inquired about the composition of the advisory committee for the World Bank-funded Legal Reform Project was told that there were no qualified female attorneys to serve on the committee. When she declared herself as both a woman and a qualified attorney she was placed on the committee.

The team held a focus group session in Gaza with six women engaged in NGOs, three of whom were lawyers. Respondents said that the courts were not independent from the Palestinian Authority and were discriminatory in their treatment of women. The courts, however, are recognized by these groups as a key institution to improve and reform.

Personal status law is based on Shari'a (Islamic law) and includes inheritance and marriage laws. Women inherit less than men, and men are allowed to take more than one wife. While women may make stipulations to protect themselves under a section of Shari'a, women are at a distinct disadvantage when it comes to divorce or child custody. Although 16 years is the age of marriage for a girl and 17 years is the age for a boy, Shari'a judges can utilize their own discretion in determining "maturity" and can subvert the law section by section according to focus group respondents. The respondents recommended revision of all laws with respect to gender, the reform of implementation (procedure) by the courts, and public information to educate the general population on gender and human rights.

Respondents contended that court fees and lack of access to legal advice constrained women and others from access to the courts to resolve legal issues. Family pressures to remain quiet and avoid shame also come into play. While male members of families may raise sufficient funds for attorneys and court fees, female family members are generally discouraged from seeking help from the courts. Two judges who had participated in USIS funded workshops on judicial sector reform were supportive of establishing a public defender program. Other legal professionals held that the Palestinian tradition of supporting individual family members resulted in defendants being able to obtain funds for court fees and attorneys from other family members.

Respondents said that legal information and information on previous cases is not available. The three women attorneys that participated in the NGO focus group said that the court library in Gaza is poor. Written code on family law, for example, is not available. Court information systems do not provide useful statistics on human rights and gender issues. The NGOs resorted to surveys to collect this kind of information.

The NGO and Charitable Organizations Law, an effort supported by the USAID Civil Society Organizations (CSO) programming, is at the second reading level at the Palestinian Legislative Council. The PLC accepted the version drafted by the Palestinian NGO Network, a coalition of 65 NGOs in the West Bank and Gaza, rather than the more restrictive Palestinian Authority version. NGOs are also involved in lobbying for new laws regarding social security, insurance, health, and family status. Their priorities are to open channels to the courts, support the passage of laws, and educate the general public on human rights and gender issues. As one respondent noted, "While the present looks dark, we should not give up."

There have been improvements resulting from legal protests and lobbying by NGO organizations. In 1996 the PA Ministry of Civil Affairs rescinded a law requiring women to obtain the written consent of a male family member before it would issue them a travel document. In the drafting of new laws, the PLC reviews for gender bias.

A ROL grants program to CSOs can complement the efforts of the other ROL Components. A judges' association and the recently unified Palestine Bar Association could be supported with workshops on citizen, human, and women's rights and general public information programs on the ROL. Other CSOs could be encouraged to engage in support for court modernization and judicial independence. In addition to a judges' association, other organizations interested in the ROL could support the increasing of judicial salaries and other improvements for the courts. The need and efficacy of public defender and legal aid programming could be explored with grants to appropriate CSOs.

On the basis of the focus group interview with attorneys and directors of CSOs, the ROL in West Bank and Gaza could benefit from supplementary grants to CSOs for targeted areas such as judicial reform and modernization, public defender programs, legal aid, and commercial law development from the perspective of the business community. As a general strategy, the ROL requires an informed and active citizenry. Support for judicial independence, commercial laws that serve the private sector, improved courts and the rendering of timely justice, and accountability of public officials through administrative law are examples of strategic gaps that could be addressed by such CSO ROL programs.

Component Structure

A U.S. contractor might prove appropriate to administer a comprehensive grants program that embraces the range of legal reform concerns (e.g. judicial independence, judicial salaries and budgets, juvenile interests, rights, and ROL public information). This could be accomplished by the contractor in partnership with an existing and respected Palestinian NGO to serve as the counterpart.

The grant process might begin with a request for grant applications that targeted Mission concerns in ROL, as well as information gathering and reports requirements, technical and peer review of applications, award of grants, and supervision/monitoring of grant implementation. Grants might be for a set period (one year) with review for possible extension and award of additional funds. Collection of results information and evaluation can be built into the grant and contractor can perform ongoing evaluation according to specific evaluation designs.

Factors for Consideration

This component directly relates to the Mission's current and ongoing civil society programs. Additional objectives could be added to the current focus of the Mission CSO effort. The Feasible Options team recommends the process of program announcements and receipt of applications from interested CSOs consistent with ROL objectives, the provision of training to CSOs, and monitoring of CSO progress as important elements for a ROL CSO Grant Component. The major result of the Component would be strengthened civil society organizations dealing with the technical ROL with emphasis on citizen awareness and participation in related democracy and governance concerns.

This component is proposed with the Feasible Options team's full awareness of a substantial, preexisting, Mission-funded civil society program, including direct grants to Palestinian NGOs. Lessons learned under that activity could be considered if the Mission chooses to refocus this

program toward the ROL. The team further recognizes that Palestinians already have a well established and vibrant civil society which receives international donor attention. The purpose of this proposed option is to target specific Mission areas of interest in ROL for community-based support and to contribute to the other ROL Components that are implemented by the Mission.

Earlier studies have recommended the development of public defender and legal aid programs. These are now accepted programs in many countries that support general accessibility to the legal system irrespective of socioeconomic or other circumstance. The Feasible Options team found that information on the need for such programs in the West Bank and Gaza relative to the other proposed components was mixed. No independently verifiable court-related information on criminal defendant representation or need for representation in civil cases was available. In lieu of a public defender program and a legal aid program as separate components of the ROL Project, the CSO approach could provide some targeted and needed support and generate information pertinent to the subsequent development of full public defender and legal aid programs.

SECTION IV

Conclusions and Recommendations

ROL Programming

The Feasible Options team recommends that the Mission design and include ROL components into its governance program. USAID has a unique opportunity to provide ROL technical assistance. The current legal and political environment in the West Bank and Gaza supports a leading role for the Mission in ROL programming. Other international donors have yet to fully accept the challenge of assisting the development of the ROL in the West Bank and Gaza. One donor representative voiced the agency's decision to await the development of USAID's projects. Another donor even offered to provide funding in future budgets to support follow-on joint activities with USAID.

USAID/West Bank and Gaza noted that it has encountered obstacles in implementing projects in other strategic assistance program areas due to the constraints of an underdeveloped Palestinian legal system. It is therefore timely to contribute to an improved legal structure as a means of removing such obstacles. Finally, it is an opportune moment to introduce an ROL program based on requests from the Palestinians themselves. There is substantial local demand for improved ROL and important evidence of growing political will among the Palestinian legal community.

Strategic Framework

An analysis of previous USAID ROL programming experience indicates four definable strategies for supporting ROL development.¹ This framework, while inherently a simplification of ROL programming reality, encompasses basic approaches pertinent for developing ROL components and activities. The four strategies are:

- *Constituency/coalition building.* The development of public support and consequently political support for improved justice and ROL.
- *Structural reform.* Strengthening the rules of the legal system including laws and legal procedures.
- *Access creation.* Assuring that all have access to legal process and justice, irrespective of socioeconomic condition, ethnic, or other considerations.
- *Legal system strengthening.* Building judicial capacity and development of effective and efficient institutions for justice.

Before developing and implementing these strategies, the authors recommend minimum criteria to be met for even contemplating ROL support. These minimum criteria are that the basic standards of human rights be in place. While much work is still to be done in this area, the Feasible Options team found that there is widespread recognition in the West Bank and Gaza of the importance of human rights. Basic private and public organizations, including the press, are in place to improve the human rights situation.

¹ Blair, Harry and Hansen, Gary, *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported ROL Programs*, USAID Program and Operations Assessment Report No. 7, Washington, D.C., February, 1994.

The four strategies can form a progression analytic tree: constituency building could support legal structural reform, which in time could take place before access creation, which could precede legal system strengthening. While this progression would be an idealized overall strategy, programming possibilities include selecting one strategy over the others and even attempting all four strategies simultaneously. The Feasible Options team recommends that all four strategies be undertaken in a comprehensive West Bank and Gaza ROL Program assuming the availability of adequate Mission resources. As shown in the development strategy chart on the next page, needs, constraints, and issues can be addressed by component efforts in each of the four strategies as enumerated under "No." Feasible option components, subcomponents, and activities are listed below according to the four strategies:

- *Constituency/coalition building*
Components: ROL, CSOs, and Judicial Sector.
Subcomponents/Activities: Coalition Building CSOs for ROL, Public Information on ROL, Judges' Association
- *Structural reform*
Components: Judicial Sector, Commercial Law, and Administrative Law.
Subcomponents/Activities: Judicial Independence and Appointments, Commercial Legislation, Court Procedures, Administrative Procedures Act, Training Programs, Judicial Institute
- *Access creation*
Components: CSOs, Legal Education, and Legal Professional Strengthening.
Subcomponents/Activities: Legal Aid, Public Defense, Law Internships, Legal Clinics, Training Programs
- *Legal system strengthening*
Components: Judicial Sector, Legal Education, Legal Profession Strengthening, and Commercial Law.
Subcomponents/Activities: Court Modernization, Model Courts, Renovation/Construction of Court Facilities, Judicial Institute, Construction of Judicial Institute Facility, Education Programs, Training Programs

Expected results

A USAID/West Bank and Gaza-funded ROL program will have direct impact on USAID's work in two Mission strategic areas:

- Expanding economic opportunities for Palestinians (SO1)
- Encouraging the establishment of more responsive and accountable governance (SO3)

Improvements in the ROL will also have a direct impact on economic growth and opportunity by creating a transparent and more predictable business environment. These improvements reduce transaction costs and encourage the normal entrepreneurial activities typical of market economies. Activities in a commercial law program target specifically the appropriate policy framework for private sector development called for under Strategic Objective 1.

In addition to contributing to a more conducive policy and legal framework for commercial activity, improvements in legal education for both student and practicing lawyers will have a positive impact on economic activity. Greater familiarity with such transactions will prepare the legal community to better serve private sector business clients, indirectly but positively affecting their access both to financial services and markets.

The various ROL options proposed in this report would have a direct impact on establishing more responsive and accountable governance called for under Strategic Objective 3. Improved performance by the judiciary and the broad legal community has the intended effect of increasing general accountability, reducing the arbitrary exercise of authority and reducing opportunities for corruption. Improvements within the judiciary potentially result in the improved administration of justice. A better trained and organized legal profession can more effectively demand a responsive and accountable justice sector.

Recommended ROL Program Priorities

Consistent with a four-strategies approach (Blair and Hansen) to improving the ROL in West Bank and Gaza, and absent financial resource limits or other major considerations, the Feasible Options team recommends that all six components of the proposed ROL Program be undertaken.

Results and elements of the six Rule of Law Program Components include:

- *Judicial sector.* The creation of the Judicial Institute would provide an immediate forum for judicial sector development activities and contribute to the creation of a ROL reform movement. Model courts in West Bank and Gaza would develop and implement appropriate court administration procedures for subsequent generalization to other courts. Construction/rehabilitation of court facilities could be undertaken in conjunction with the model courts development effort.
- *Legal education.* Developing the curricula of law schools, augmenting the law school libraries and instituting current legal information technologies, and providing other training programs would immediately assist students to apply new legal concepts and skills including human rights, ethics, commercial law, alternative dispute resolution, and practical legal clinic programming. Linking the Bir Zeit University Law Center legal data base to key institutions, to the Bar Association and Palestinian Legislative Council in addition to law schools, would contribute to the unification process and train legal professionals in legal information access.
- *Commercial law.* A comprehensive commercial law development program would offer much needed assistance and link U.S. technical expertise with the West Bank and Gaza effort to develop a sustainable market economy to international standards and expectations.
- *Legal professions.* Raising the standards of current and new lawyers through the legal professions component with the Bar Association would support sustainability of short-term and long-term ROL objectives.
- *Rule of Law/civil society organizations.* ROL objectives such as public defense, legal representation of the indigent, community support for rule of law programming, judicial standards and salaries, and judicial independence can be added to the existing Mission program of support to civil society organizations.

- *Administrative law.* The administrative law component would support transparency in the administration of government regulations, including in the financial sector activities of banking, securities, and insurance.

Of the six components, the Administrative Law Component is seen as the least feasible given the lack of understanding or interest in this complex area and the lack of an obvious counterpart agency. The ROL/Civil Society Organization Component could be implemented with adjustments to the existing Mission support to CSOs.

Accordingly, the Feasible Options team recommends that the Mission consider undertaking, at a minimum, a comprehensive four-component program to improve the state of law and legal institutions in West Bank and Gaza, to include an emphasis on commercial law. Each of the four components forming such a program—commercial law, legal education, judicial sector, and strengthening of the legal profession—could be implemented as free-standing activities. All of the four components have common elements, such as the need for information technology, and all could benefit greatly from “cross-fertilization” with the other components. For example, specialists working under the commercial law activity would be expected to offer lectures in their subject matters to participants under the other components; computer systems of the participating institutions would be linked to legal databases and legal information web sites; and judges could be invited to ADR and IPR workshops hosted by the Palestinian Bar Association. In addition, economies of scale would be realized through program-wide use of unified procurement procedures, exchange of lecturers, and other means. Major synergism could be created throughout the sector, and a greatly enhanced system-wide benefit would be achieved through the funding and implementation of such a total program.

Should the four component ROL effort, not be undertaken due to resource or other considerations, the Feasible Options team would recommend the funding of the above-described total program, but without the commercial law component. This is because the remaining three components would all impact in an integrated way on the legal profession broadly. Broad impact on a significant portion of the total legal sector would be better than to diffuse or limit the impact of a USAID-funded program.

The third option would be the funding of a free-standing commercial law project. The rationale for such a project, while it would be sub-optimal as compared to a broader program, would be strong. Such a project would be linked directly to the Mission's ongoing activities in support of an emerging market economy in West Bank and Gaza and would be aimed at improvement in a range of antiquated laws and the absence of laws. The commercial law project would contribute significantly to the enhanced working of the economy and would be worth doing independently, if this choice is necessary.

A final and lowest-ranked option would be to choose among the three components making up the “legal professions” program described above. Given the interrelationships among those components, the Feasible Options team does not recommend such an approach. However, among those components, an order-ranking would be:

- *Legal education.* This would be a high priority due to the desirability of working with institutions already in place and their impact on the quality of future generations of lawyers in the West Bank and Gaza. There would also be an impact from the development of legal information and the introduction of information technology.

- *Judicial sector.* This is also an area of importance due to vast needs. However, impact would likely be seen more slowly due to the need to consider and address a range of constraints, such as judicial salaries, improving training by establishing the judicial institute, modernizing court administration practices, and upgrading courthouse facilities.
- *Legal profession strengthening (Bar Association).* There is an opportunity for early development of ideas whose time has come, such as alternative dispute resolution (ADR). Interest within the profession could start quickly with a series of workshops. The profit motive of the private bar would be a stimulus to good attendance and participation.

Project management

With respect to program management, the team agreed that a comprehensive ROL program would require significant project management by both Mission staff and technical contractors. The nature of the recommended projects would be labor intensive given the level of expectation currently voiced by both likely recipients and other donor agencies. In addition, the projects suggested would involve several counterparts and require that significant trust and communication be established and maintained. The team recommends that USAID technical staff members manage no more than one major project component for those efforts that are comprehensive and contain overlapping subcomponents. Furthermore, a minimum of one foreign service national should be assigned to each large technical project to ensure local input and management assistance. The total additional Mission staff required will depend upon the number of components selected for implementation and the final designs for those components. The Feasible Options team envisions a minimum of two expatriate personnel and two local hire ROL professionals for the proposed four-component ROL program.

Feasible options timing

Several meaningful results that impact upon West Bank and Gaza ROL needs, issues, and constraints can be accomplished over the next two to three years. The components with the highest potential for impact within two years are Legal Education, Legal Professional Strengthening, and ROL/CSOs. While some subcomponent results can be expected for the Judicial Sector, Commercial Law, and Administrative Law Components within two to three years, the major portion of the impact will be realized after the three-year period.

Each of the project concepts or components should have a minimum project period of three years and a maximum of six years. With adequate planning and allocation of adequate project resources, several project targets can be reached in a relatively short period. USAID's demonstration of a long-term commitment will sustain initial progress and ensure that other donors will have sufficient time to deliver supplemental program funding.

Factors to be considered in estimating the time required include component design, identification and agreements with counterpart organizations, project start-up requirements, and actions required of external agencies (e.g. review and passage of legislation, decisions of counterparts before proceeding with project tasks). An interesting example is the three-year period of planning and negotiations for the World Bank loan to the Ministry of Justice for a five component ROL project. In this instance, results may not be realized until four years have elapsed from the decision to proceed with a project.

Prior to undertaking any of the six recommended programming options, project designs will be required to develop the specific scopes of work and budgets. Development of these scopes can be accomplished with a series of short-term, two to three month, delivery orders. The tasks of the project

designs would include identification of subcomponents for immediate implementation and development of the longer term component requirements.

Some subcomponents could be accomplished through interagency agreements. Other components or subcomponents, depending upon the complexity and magnitude of the project activities, may be selected for competitive bids. The actual time to initiate a program option from the decision to implement will vary from six to twelve months, allowing three additional months after the design phase for issuance of a program component delivery order, and nine months for the issuance of an RFP and the selection of a contractor.

Project startup (staffing and project office establishment) will vary from 2 to 4 months. Program implementation will require up to two years for the major activities of the Judicial Sector, Commercial Law and Administrative Law Components. The Legal Education, Legal Profession Strengthening and ROL/CSO Components could have a major part of their subcomponents implemented within a year after project start-up.

Allowing a conservative estimate of three months for design, three months for identification of an agency or contractor, three months for project start-up, and one year for implementation would result in a total of 21 months for the initial results to be realized by the Legal Education, Legal Profession Strengthening, and ROL/CSO Components. The Judicial Sector, Commercial Law, and Administrative Law Components should see initial results for their major activities within 33 months.

Timelines for construction of facilities will depend upon the programmatic approach taken. A courthouse facility to house current functions and equipment without major modifications to administrative procedures could be designed and constructed within 12 to 18 months. A courthouse facility planned and constructed to meet projected needs and the operations of a developed model court may require up to an additional 12 months. Construction of a facility to house the Judicial Institute could be accomplished in 12 months or less.

Estimated project cost

The team estimates that a budget for the four-component comprehensive ROL Project would be no less than \$13 million for the initial three-year period and no more than \$18 million. Costs for new court construction have been estimated by another donor at a combined \$15 million for a facility in both West Bank and Gaza. The construction of a new Judicial Institute facility would be approximately \$500,000 judging from the donor contributions of \$400,000 for the new building for the Bir Zeit University Law Center. Adding the ROL/Civil Society Organizations and Administrative Law Components would increase the project budget by an additional \$6 million to \$10 million for the initial three-year period.

Final note

While there may be reasons not to implement an ROL program in certain circumstances, the timing is right for a comprehensive ROL program in the West Bank and Gaza. Palestinian law and legal institutions are developing and will continue to develop with or without donor assistance. A comprehensive ROL Program will support the ongoing evolution and development of a West Bank and Gaza legal system characterized by the effective, efficient, and equitable administration of justice; accountable governance; and open and free markets. USAID has a significant and historic opportunity.

ANNEX A

Interview List (Phases I and II)

Private Sector (Includes Attorneys)

Bashar Masri
Newspaper Publisher and Businessman
Ramallah, West Bank

Shukri Nashashibi
Attorney-at-Law
Former Judge, Court of Appeals
Ramallah, West Bank

Dalal Sharif
Legal Intern (Stage)
Graduate of Al Quds Law Faculty
Office of Shukri Nashashibi
Attorney-at-Law
Ramallah, West Bank

Khalil Y. Ansara
Attorney-at-Law
Ramallah, West Bank

Sharhabeel Y. Al Zaeem
Senior Partner
Sharhabeel Al Zaeem & Associates
Gaza

Reem S. Abu Dagga
Attorney-at-Law
Sharhabeel Alzaeem & Associates
Gaza

U.S. Agencies (Includes USAID Contractors)

Gerry M. Feierstein
Deputy Principal Officer
U.S. Consulate General
Jerusalem

John P. Desrocher
Economic Officer
U.S. Consulate General
Jerusalem

Keith Schulz
Legal Advisor
Strengthening the Legislative Capacity of the
Palestinian Legislative Council
ARD Project Office
Ramallah, West Bank

Randy Ackerman
Chief of Party
Strengthening the Policy Formulation and
Legislative Drafting Capability of the Palestinian
Executive Authority
Checchi/Pal Tech Project Office
Gaza

Hiba Hussein
Legal Consultant
Strengthening the Policy Formulation and
Legislative Drafting Capability of the Palestinian
Executive Authority
Checchi/Pal Tech Project Office
Gaza

Ibrahim Bisharat
Program Development Specialist
Democracy and Governance Office
USAID West Bank and Gaza
Tel Aviv

Attorneys General (Prosecutors)

Ass'ad B. Mubarak
Attorney General
Ramallah Court House
Ramallah, West Bank

Judge Ahmed Al Mbaid
Prosecutor, Security Courts
Jenin, West Bank

Sa'ad W. Shuhaiber
Deputy Attorney General
Gaza

Mazen H. Sesalem
Assistant Attorney General

Attorney General's Office
Gaza

Judicial Sector

Sami Sarsour
Chief Judge
Court of Appeals
Ramallah, West Bank

Ahmed Ali
Chief Clerk
First Instance Court
Ramallah, West Bank

Mohammed M.S. Soboh
Acting Chief Judge
Court of Appeals
Gaza

Saada El Dajani
Judge, Court of Appeals
Gaza

Salwa El Saykh
Judge, Magistrate Court
Gaza

Khalil El Shayah
Head Judge, Central Court
Gaza

Palestine Bar Association

Abu El Nasr
Attorney-at-Law
Palestine Bar Association
Gaza

Ali Gamil Mhanna
Attorney-at-Law
Palestine Bar Association
Ramallah, West Bank

Palestinian Authority

Ahmad Abed El-Rahman, Minister and
Secretary General of the Cabinet of Ministers
Palestinian National Authority
Gaza

Ibrahim M. Aldaghma
Deputy Minister of Justice
Head of Diwan Al Fatwa Wa Al Tashri
Ministry of Justice
Gaza

Atif El Khoudaary
General Manager
Ministry of Justice
Gaza

Atia Abu Moor
Project Manager
Legal Development Project
Palestinian National Authority
Ramallah, West Bank

Civil Society Organizations (Including Attorneys)

Yolla Haddaden, Director
Attorney-at-Law
Palestinian Centre for Peace and
Member of Advisory Committee
World Bank Legal Reform Project
Ramallah, West Bank

Raji Sourani
Palestinian Center for Human Rights
Gaza

Lama Hourani
Women's Rights Activist and Project Assistant
UNIFEM
Gaza

Majda A. Saqqa
Public Relations Specialist
The Culture and Free Thought Assn.
Gaza

Abeer Jabber
Attorney
Women's Empowerment Project
Program for Mental Health
Gaza

Wafa Abed El Rachman
Attorney
NGO Network Coordinator
Gaza

Palestinian Legislative Council

Nahedd M. Er-rayyes, Member
Palestinian Legislative Council (PLC)
President of the Palestine Bar Association
and Former Deputy Speaker of PLC
Gaza

Tariq Derawi
Manager, Legal Office
Palestinian Legislative Council
Gaza

Sbah Al Almi
Legal Advisor, Legal Office
Palestinian Legislative Council
Gaza

Law Schools

Camille Mansour
Director
Bir Zeit University Law Center
Bir Zeit, West Bank

Ghassan Faramand
Deputy Director
Bir Zeit University Law Center
Bir Zeit, West Bank

Ali Khashan
Dean, Faculty of Law
Al Quds University
East Jerusalem

Ibrahim Shaban
Lecturer
Law Faculty
Al Quds University
East Jerusalem

Bilal Al-Shafi
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An-Najah National University
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Faculty of Law
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Nablus, West Bank

Malvina Khoury
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Faculty of Law
An-Najah National University
Nablus, West Bank

Salah Kamel Musa
Student
Faculty of Law
An-Najah National University
Nablus, West Bank

Nihad Khanper Musa
Student
Faculty of Law
An-Najah National University
Nablus, West Bank

Ahmed Al Ahmed

Student, Faculty of Law
An-Najah National University
Nablus, West Bank

Mohammed Abu Imara
Dean and Professor in Public Law
Faculty of Law
Al Azhar University
Gaza

Salem El-Kourid
Professor in Public Law
Faculty of Law
Al Azhar University
Gaza

Mostapha Ayad
Professor in Legal Civil Procedure
Faculty of Law
Al Azhar University
Gaza

Donor Representatives

Gavin Evans
Counselor
European Commission Representative Office
West Bank and Gaza Strip
Jerusalem

Fred Scutt
Department for International Development
British Consulate General
Jerusalem

Joseph Schechla
UN High Commission for Human Rights
Gaza

Amin Mekki Medani
UN High Commission for Human Rights
Gaza

James Shaw
Legal Advisor
UN Office of the Special Coordinator (UNSCO)
Gaza

David Mitchels
Acting Assistant Director/Field Legal Officer

UN Relief and Works Agency for
Palestinian Refugees in the Near East (UNRWA)
Gaza

Jamal Daoud
Legal Assistant
UN Relief and Works Agency for
Palestinian Refugees in the Near East (UNRWA)
Gaza

Interviews in Washington, DC

Kimberly A. Finan
Director
Office of Middle East Affairs
U.S. Agency for International Development
Washington, DC

John F. Wall Jr.
Desk Officer
West Bank & Gaza
U.S. Agency for International Development
Washington, DC

Elizabeth Warfield
Global Bureau
U.S. Agency for International Development
Washington, DC

John Wasielewski
U.S. Agency for International Development
Washington, DC

David S. Meale
Office of Israel and Arab-Israeli Affairs
NEA-IAI
U.S. Department of State
Washington, DC

Linda A. Wells
Director
Commercial Law Development Program
Office of the General Counsel
U.S. Department of Commerce
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Commercial Law Development Program
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U.S. Department of Commerce
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Deputy Director
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Peggy Vidal
Project Administrator
USIA Judicial Training Project
National Judicial College
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Patrick Meagher
West Bank/Gaza Commercial Law Project
The IRIS Center
University of Maryland
College Park, MD

Chas Cadwell
Director
The IRIS Center
University of Maryland
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Malcolm Russell Einhorn
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World Bank Judicial Administration Project
Abt Associates
Bethesda, MD

ANNEX B

Selected Bibliography

- ARD, Inc., *Report on Technical Assistance to the Palestinian Legislative Council in the Review of the Judiciary Law*, Burlington, Vermont, August, 1998.
- Buscaglia, Edgardo and Dakolias, Maria, *Judicial Reform in Latin American Courts: The Experience in Argentina and Ecuador*, World Bank Technical Report No. 350, Washington, D.C.
- Blair, Harry and Hansen, Gary, *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*, USAID Program and Operations Assessment Report No. 7, Washington, D.C., February, 1994.
- Carothers, Thomas, "The Rule of Law Revival," *Foreign Affairs*, Vol. 77, No. 2, March/April, 1998.
- Carothers, Thomas. Democracy Assistance: "The Question of Strategy," *Democratization*, Vol. 4, No. #, Autumn, 1997.
- Center for Governance and Democracy, *Judicial Administration Project in the West Bank and Gaza*, Global Bureau, USAID, March, 1996.
- Chodosh, Hiram E. and Mayo, Stephen A. "The Palestinian Legal Study: Consensus and Assessment of the New Palestinian Legal System," *Harvard International Law Journal* Vol. 38, Number 2, Spring 1997.
- Coben, James R. "Community-Based Dispute Resolution," *12 Hamline Journal of Public Law and Policy*, Spring 1991.
- Dakolias, Maria, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, World Bank Technical Paper No. 319, Washington, D.C., 1996.
- El Dahdoh, Sulieman; Muhanna, Ishak; and Sisalem, Mazen, *The Laws of Palestine, Volume II, Criminal Procedure*, in English and Arabic, Jerusalem, 1996.
- El Dahdoh, Sulieman; Muhanna, Ishak; and Sisalem, Mazen, *The Laws of Palestine, Volume III, Dangerous Drugs, Firearms, and Ammunition Ordinances*, in English and Arabic, Jerusalem, 1997.
- Hammergren, Linn. "Judicial Training and Justice Reform," USAID/Center for Democracy and Governance, August, 1998.
- Hammergren, Linn. "Institutional Strengthening and Justice Reform," USAID/Center for Democracy and Governance, August, 1998.
- Institute for the Study and Development of Legal Systems, *Palestinian Legal Study: Solutions to Contemporary Problems in the Palestinian Civil and Criminal Justice Systems*, United States Information Service, July 25, 1996.
- Institute for the Study and Development of Legal Systems, *Palestinian Legal Study: The Restoration*

and Modernization of the Palestinian Civil and Criminal Justice Processes, United States Information Service, June 30, 1995.

IRIS. *International Commercial Transactions in the West Bank and Gaza: Model Contracts and Commentary*, 1996

IRIS. *Commercial Legal Institutions in the West Bank and Gaza*, Country Report No. 18, March, 1995.

Ministry of Justice, Palestinian Authority, *Rule of Law Strategic Development Plan*, Australian International Legal Resources, August, 1996.

Office of the Special Coordinator in the Occupied Territories, *Rule of Law Development in the West Bank and Gaza Strip: A Development Assistance Study*, UNSCO, United Nations, 1997.

Palestinian Legislative Council, *Judiciary Draft Law*, Submitted for Second Reading, Gaza, September 2, 1998.

Palestinian Legislative Council, *Basic Law*, Non-Official Translation by Jamal Abu Khadijeh, ARD, Inc., November 25, 1997.

Russillo, Frederick M., *Preliminary Judicial Systems Needs Assessment: The Autonomous Areas of Palestine and the Occupied Territories*, AMIDEAST, November, 1994.

Salem, Paul E. "A Critique of Western Conflict Resolution from a Non-Western Perspective," *Negotiation Journal*, Volume 9, Number 4, October 1993.

USAID/West Bank & Gaza Mission, *Vital Statistics and Program Overview*, October, 1998.

USAID/West Bank & Gaza Mission, "Strategic Objective 3: More Responsive and Accountable Governance," *Results Report and Resources Request, FY 2000*, June 12, 1998.

USAID/West Bank & Gaza Mission, *Rule of Law Support*, November, 1996.

USAID/West Bank & Gaza Mission, "More Responsive and Accountable Governance" and "Special Objective: Transition to Self Rule Facilitated," *USAID/West Bank and Gaza Strategy, 1996-2000*, March, 1996.

Wheeler, Russell. *Judicial Independence, Its Relation to Judicial Independence*, The National Center for State Courts, 1988.

World Bank, *West Bank and Gaza Legal Development Project, Technical Annex to the Memorandum of the President*, May 14, 1997.

Preliminary Field Work Plan

A. Introduction

Given its experience with a 1995 judicial training pilot program and other assessments at that time, the democracy and governance strategy of the USAID West Bank and Gaza Mission has since focused on civil society, legislative development, and the executive policy-making process. With the completion of two years of USAID program implementation in these areas, and Palestinian Legislative Council progress in reviewing judiciary law to unite the West Bank and Gaza legal and judicial systems, as well as World Bank-supported review of civil and criminal codes, the Mission is reviewing whether rule of law (ROL) programming should form part of the new strategy.

ROL programming can also relate to the Mission's two other strategic areas. In expanding economic opportunities for Palestinians, Mission technical support and project efforts have been focused in the areas of market development, technology, and finance, over a wide range of products and size of firms. The Mission has addressed the critical shortage and economic use of water by giving technical assistance on planning, developing water sources and distribution systems, and upgrading and extension of wastewater systems. Proposed options that may result from the ROL review and analyses should be compatible with Mission strategic objectives, as well as contribute in the areas of private sector legal and regulatory reform and water policy.

This Feasible Options effort will assist USAID/West Bank and Gaza to determine whether adding ROL/justice-sector activities to the Mission's governance portfolio is feasible at the current time and, if so, will identify the highest priority options for such programming in the West Bank and Gaza. In Phase I, the Desk Review and Preliminary Field Work Plan, the team reviewed relevant reference materials, began conducting related interviews in Washington, and developed a detailed field work plan. Phase II, Field Assessment and Preparation of Report, will be conducted in accordance with the scope of work and this preliminary field work plan, with adjustments and modifications as required following ongoing review of field work progress and consultation with the Mission.

B. Phase I Activities

Members of the core Feasible Options team met four times by October 15, 1998. At the initial meeting, it developed a general strategy and schedule for materials review and interviews, and discussed team composition. At subsequent meetings, it reviewed and analyzed the content of available written materials, to identify issues and ascertain directions of related ROL planning and program implementation. It identified ROL specialities within the team as related to ROL issues and potential feasible options, and reviewed and revised drafts of the Preliminary Field Work Plan.

Team members read all of the West Bank and Gaza reference materials. Phase I interviews will be conducted up to the departure of the team from Washington and memoranda will be prepared on each interview.

An outline of the Preliminary Field Work Plan was drafted by October 9 and distributed to the team members. After completing key interviews, reviewing written materials, team meetings, and incorporating information provided by e-mail from the Mission, the team revised and submitted the draft for Mission review on October 16, 1998.

C. Approach/Methodology

More than two-and-a-half years have passed since the completion of the USAID/West Bank and Gaza-supported judicial administration conferences/workshops and demonstration project. Findings from that experience resulted in recommendations to defer any large-scale ROL project undertakings or to engage only in a set of 11 small-scale activities. Since that time, other donors have undertaken assessments and specific projects in ROL. The Palestine Authority has gained five years of experience in governing. West Bank and Gaza legal institutions have responded and reacted to the donor offerings of technical assistance.

Members of the Feasible Options team have reviewed the available Mission documentation and other relevant reports. They conducted telephone and in-person interviews and held meetings to discuss the gathered information and the implications for determining ROL programming feasibility and identifying program options. The team will continue with materials review, interviews, and meetings during the week of October 19, prior to departure to Tel Aviv.

The Feasible Options Team will use an amalgamation of inductive and deductive procedures. The approach includes an inclusive listing of potential ROL subject areas; analysis of the status of ROL programming; assessment of needs; a focus on strategic considerations; identification of high-potential areas; coordination/complementarity with other donors; discussions with Mission officials and counterparts/partners; the development of options; and incorporation of feedback into the final report. For the selected priority ROL subject areas, the team will address strategic objectives and program direction, as well as feasible project options with respect to expected results, effectiveness, and general resource requirements.

C1. Listing and Selection of Rule of Law Areas

According to the Feasible Options scope of work, the ROL areas to be addressed include (but are not limited to) judicial training, court modernization, legal practice development, administrative reform (government agency administrative and regulatory law), prosecutorial system development, and alternative dispute resolution. In the scope of work the following areas are also noted: commercial law reform, and land property title issues as related to the Mission's water programs. In addition, the scope of work stipulates that proposed ROL assistance activities must significantly contribute to the Mission's strategic objective of more responsive and accountable governance, and be compatible with and contribute to other strategic objectives, particularly in the areas of private sector legal and regulatory reform, and water policy.

The team paid particular attention to recommendations contained in previous West Bank and Gaza judicial and ROL reports in connection with team members' experience and understanding of the sector. It considered including in the assessment other ROL areas, including: comparative law, constitutional law, legal information, public security/crime reduction, independence of the judiciary, judicial ethics, standards for ROL personnel, environmental law, human rights, and public defender/legal aid/representation of the indigent. Several of these may be marginally pertinent to contributing to or being compatible with the Mission's strategic objectives. Several may presently not be appropriate to include, due to other considerations. Though the team is alert to possible and feasible ROL options, it will focus its efforts only on those priority areas approved by the Mission.

C2. Mission Coordination

In addition to meetings with Mission personnel to consult and brainstorm about feasible options within the West Bank and Gaza environment, the team proposes meetings or communications to address key decision points in the feasible options process. These will include refinement of the field interview schedule; narrowing of ROL component options; determination of feasibility of selected options; expansion of project possibilities (resource requirements, critical assumptions, expected impact, measurement of results); draft report and oral briefing; and receipt of Mission comments, requests for clarifications, and recommendations for incorporation into the final report.

All available team members will participate in the initial team/Mission meetings. All available team members will also participate in the project status/review meetings and the final oral briefing.

C3. Information Collection and Interviews

The interviews conducted in Phase I in Washington have pointed to the dynamic nature of the situation in both West Bank and Gaza regarding shifts in attitudes and the apparent high level of ROL planning and project start-ups by other U.S. agencies and other donors. Though the information base is extensive, new questions regarding the nature of these changes and developments have emerged. Though the team will work closely with Mission personnel and share Phase I insights regarding potential ROL programming, clarifications as to the emerging ROL needs of Palestinians—in absolute terms as well as in relationship to ongoing Mission project efforts and strategic objectives—will enhance the overall ROL knowledge base and the quality of the program options discussions.

Accordingly, the team recommends that selected interviews be conducted with a sampling of identified potential counterparts and partners, as well as with legal practitioners and other ROL project personnel. It also recommends onsite review, through interviews by team members, of the ROL environment in both West Bank and Gaza. Subject to consultations with the Mission and agreed-upon assessment requirements, interviews with West Bank and Gaza legal practitioners could be somewhat limited, given the need for other donor interviews and time and travel constraints.

To support the effective use of team members to verify assumptions regarding feasibility of ROL programming and how such a program should be focused, the team will develop a field interview list. This list will be derived from several of the reference materials, including the March 1996 Global Bureau report, among other sources. The list will be amended following the initial meetings with the Mission, with attention to including senior Palestinian Authority officials.

The team will draft several interview outlines to guide it in the conduct of the interviews. Information to be obtained will include needs, observations on attitudes to ROL projects, and related issues. All interviews will be prefaced with the need for clarifications and additional information to support USAID planning. Specific programs or project components will not be discussed unless previously cleared with the Mission. The team will take a focus-group approach when conducting interviews. Where three or more individuals are interviewed, individual opinions tend to merge into consensus regarding the situation, needs, and suggestions for action.

C4. Team Composition and Phase II Assignments

Given the potential broad range of ROL subject areas that need to be addressed, the Feasible Options team will include members with design and/or program-implementation experience in the following areas of apparent primary relevance: judicial training (to include judicial ethics); court modernization; legal practice development; administrative reform (government agency administrative and regulatory law); prosecutorial system development; alternative dispute resolution; commercial law reform; and land/property title issues as related to the Mission's water programs. The team will also consider expertise in such related areas as comparative law, constitutional law, legal information, independence of the judiciary, environmental law, human rights, and public defender/legal aid.

In addition to Kevin O'Donnell, Leo Surla, and Robert Buerghenthal, names of additional team members will be submitted for Mission review and approval. Following completion of the team membership, specific ROL subject areas and other team activities will be assigned to individual members.

D. Desk Review and Interviews

Findings from the Phase I desk review and interview activities that have a bearing on the preliminary work plan are outlined below. Pertinent issues are identified for clarification and analysis during the team's work in the field. Apparent gaps and unanswered questions in the Phase I information base have also been identified for data collection and/or clarification during Phase II.

D1. Issues

Issues identified from the materials review and interviews are listed under broad headings. Also indicated are the sources of the listed issues.

Economic opportunity and commercial and private sector development

- Absence of modern legal and regulatory framework governing business transactions (Mission/WB&G, October 1998)
- Antiquated commercial law, Gaza worse than West Bank (IBRD, May 1997).
- No regulation in banking insurance, capital markets (IBRD, May 1997)

Coordination/cooperation

- Over the next two years, under economic opportunity plans as related to ROL activities, USAID/West Bank and Gaza will help build greater transparency and stability in WB&G financial systems with emphasis on international standards for accounting and financial reporting, and regulation and oversight of commercial banks (Mission/WB&G, October 1998)
- Coordination between judiciary and Ministry of Justice (MOJ) on court facilities development (MOJ, Australian ILR, August 1996)
- Existing discontinuities in the judicial/legal sector: 1) absence of unified laws and administrative procedures in the West Bank and Gaza; 2) absence of consolidated, clear lines

of authority within the legal community; and 3) absence of cooperative relations between the West Bank and Gaza legal communities (USAID Global, March 1996)

- For World Bank project implementation and coordination, a Project Steering Committee was proposed to be chaired by the minister of justice and include the deputy minister of justice, the president of the High Court, and the attorney general as members (IBRD, May 1997)

Water resources

- USAID has a role in helping implement water resources articles of Palestinian-Israeli agreements (Mission/WB&G, October 1998)

Democracy and governance

- Role of the judiciary relative to the executive and legislative branches (Mission/WB&G, S03, June 1998)
- Separation of powers: executive, legislative, and judicial (IBRD, May 1997)

Constraints to ROL programming

- Absence of unified laws and administrative procedures in the West Bank and Gaza; 2) absence of consolidated, clear lines of authority within the judicial sector and legal community; and 3) absence of cooperative relations between the West Bank and Gaza legal communities (Mission/WB&G, ROL Support, November 1998)
- Mission staffing and funding constraints to ROL programming (Mission/WB&G, ROL Support, November 1998)
- Legal and policy considerations regarding Palestinian Authority counterparts (USAID/Washington interviews)

Unified Laws of West Bank and Gaza

- Absence of unified laws and administrative procedures in the West Bank and Gaza (Mission/WB&G, ROL Support, November 1998)

Ministry of Justice

- No indication of a role for the MOJ in consumer protection (MOJ, Australian ILR, August 1996)
- Role of MOJ in unifying laws of West Bank and Gaza (MOJ, Australian ILR, August 1996)

Legal information

- Legal information sorely lacking: MOJ monthly bulletin of laws is only publication (IBRD, May 1997)

Court administration

- Court case backlogs (IBRD, May 1997)
- Lack of trained judicial staff, in addition to lack of trained judges (IBRD, May 1997)

D2. Questions and Information Gaps

In addition to the issues listed above, the desk review of reference materials and Phase I interviews led to certain questions by the team. Additionally, information regarding certain aspects of ROL possibilities were seen as important to subsequent analyses of feasibility. The team expects additional questions, as well as important issues, to emerge from the initial meetings at USAID and from initial field interviews. The listing below will support the development of interview formats and lists of relevant information to be collected.

- Regarding the proposed three conditions for potential USAID ROL project development, what, if anything, has changed? Notwithstanding those issues, why have other donors chosen to go ahead? What has been their experience in ROL over the last two years?
- What is the status of court reorganization in West Bank and/or Gaza?
- Is a Judicial Training Institute separate from a Court Research Institute feasible and/or acceptable?
- Has the Palestinian Legislative Council considered the role of the judiciary and independence of the judiciary?
- Have there been any developments regarding the authority of the Ministry of Justice relative to the courts?
- Is there a level of regional autonomy in general government in the West Bank and Gaza, as there is in the judicial structures and laws? Can we view these as separate states in a federation, like the United States, with their own legitimate regional differences?
- What is the progress in unification and harmonization of laws?

D3. Current Rule of Law Projects

According to the UNSCO Rule of Law Development Assistance Survey of early 1997, more than 100 studies and ROL project components were compiled. A substantial portion of these were completed studies and assessments or short-term training and technical assistance efforts. Five pending and current components that exclude USAID-supported efforts, with budgets ranging from \$1 million to \$1.7 million, were noted for police academy construction and equipment. Ministry of Justice technical assistance, two donors supporting democracy NGO development, and Bir Zeit legal

database development. Approximately \$30 million for 10 projects in electoral system development were listed.

Five components of the World Bank three-year project are to be undertaken within the next few months (IBRD, May 1997). These components are as follows: 1) Unification and Development of Legislation (\$1.07 million); 2) Court Administration (\$1.52 million); 3) Judicial Training (\$922,000); 4) Alternative Dispute Resolution Mechanisms (\$660,000); and 5) Legal Information (\$385,000). Though Components 1 and 5 do not yet have implementing organizations, contractors have been selected for Component 2 (Abt Associates), Component 3 (Bir Zeit University), and Component 4 (Search for Common Ground). No implementation has taken place.

D4. Selected Recommendations/Proposed Projects from Reference Materials

In addition to assessments regarding issues and constraints, several of the reference materials noted or recommended ROL projects. Selected recommendations are listed below.

Legal information

- Proposed computerized legal and judicial database and relationship to judicial and legal community users (MOJ, Australian ILR, August 1996)

Court administration

- Development of a court management plan (USIS, July 1996)
- Eleven recommendations for small-scale activities only in court administration (USAID Global, March 1996)

Requiring some donor technical or resource support:

1. Electronic recording of court proceedings
2. Standardize court forms
3. Computer support for clerks
4. Expanding case filing system
5. Records management/judicial archives
6. Legislation recommendations on judicial administration (not unified laws/procedures)

Could be undertaken by Palestinians without substantial donor support:

7. Inventory/evaluate judicial records
8. Purge judicial records
9. Professional librarian/archivist
10. Procedure Manuals for Court Operations
11. Archive closed files

Public defender/legal aid

- Establishment of a public defender system and legal aid for civil matters (USIS, July 1996)

Legal practice development

- Establishment of a lawyers institute (USIS, July 1996)

Judicial training

- Establishment of a judicial institute (USIS, July 1996)

E. ROL Strategy and Options Development

The USAID experience in ROL programming indicates that the field is dynamic and continually evolving. ROL reflects the social, economic, political, and material reality of international, national, and community jurisdictions. Like democracy, the work of ROL is never done. The promulgation of new laws and regulations, as well as the development of new approaches to implementation and enforcement, must continue to meet the changing needs of the population. USAID has long been at the forefront of this challenging field, and has taken the necessary risks to develop effective and relevant ROL programming in regions around the world. Other bilateral and multilateral donor organizations eventually have followed and are now heavily engaged in ROL programming. Developing countries and countries in transition, apparently at first reluctant to engage in ROL programming, are now seeking technical assistance and donor support.

Developing an appropriate taxonomy for the purpose of analyzing ROL programming is a challenge due to the great extent to which all aspects of human behavior and interaction are regulated by complex cultural and historical norms that are in turn guided by laws and systems of enforcement and adjudication. ROL in all nations continues to evolve, generally as a gradual process with refinements. In comparison, the situation in developing countries and nations in transition is volatile, and major opportunities exist for ROL efforts that have an immediate and lasting impact. At the same time, negative results from inaction or incomplete strategy and program development can also have a lasting impact.

The team will initially order potential subject areas, issues, and program Options to guide field activities and the necessary analyses to identify feasible, priority options. An initial categorization includes three areas as proposed by Thomas Carothers: 1) the writing of legislation, including regulations development, code revisions, and harmonization; 2) institutional strengthening, from the capacity to write laws, to implementation; and 3) government compliance with law and anti-corruption measures.

USAID has been involved in all three of the above categories of ROL programming in countries around the world. Its major focus, however, has been on institutional strengthening. Initial discussions with the Mission will address its vision for ROL programming in the West Bank and Gaza, as well as the practical limitations of such programming given the current situation, constraints on resources, and available program opportunities.

Explicit considerations for ROL strategy development and option identification will include the potential for human resource development and training, and third-country training/conferences; identification of key actors, including influential judges, PA officials, and NGOs; the potential for system modernization and technical assistance as incentives to undertake potentially sensitive ROL components and related programs; and the need for coordination with ongoing and other proposed ROL programming.

E1. Feasibility of Rule of Law Program Options

The team will look at both past and present conditions to assess the feasibility of expanding Mission governance programs to include ROL programming. Do past problems still exist? Has progress been sufficient to consider ROL possibilities? Have other obstacles emerged? Is there sufficient political will to undertake difficult ROL programming? Who are the change agents, the resources for change, the dedicated and committed individuals?

If the team database and analyses point toward ROL program feasibility, the team will explicitly address other factors contributing to that conclusion, including the relationship of ROL to other USAID and Mission strategic objectives; relative resource requirements. costs and management; sustainability; social and economic considerations, relationship to pertinent other donor activities; and need, expected impact, and measurable results.

E2. Rule of Law Options

The team will address each of the designated ROL categories and subject areas: current needs, donor developments and commitments, relationship to Mission objectives in related strategic categories, and related issues.

It also will assess the following factors of options it identifies for ROL programming: strategic compatibility in responsive and accountable governance and other Mission strategic objectives. including private sector legal and regulatory reform and water policy; timing/funding expectations for activities to achieve meaningful results over the next two to three years; and the political will of the Palestinian Authority, justice sector, and West Bank and Gaza legal communities to work together.

The team will address evaluation criteria for selected priority ROL program options, including the relationship of such options to the achievement of Mission strategic objectives, and will identify short- and long-term results, along with appropriate indicators and measures, as appropriate. Depending upon the number and nature of identified ROL program options, program components may require more complete development, and analysis of potential impact, in a subsequent project design phase.

F. Phase II Activities Tasks and Schedule

October 24:	Team departs for WB&Gaza
October 26:	Field assessment begins (first meetings with USAID) Review preliminary work plan and schedule Adjustments as necessary to schedule
October 27:	Meetings with USMD and selected USAID contractors continue Relationship of mission objectives to ROL programming issue identification
October 28	Meetings with other donors in Tel Aviv
October 29-31	Meetings in West Bank
November 24	Prospective counterparts and partners ROL projects

	ROL environment
November 5	Meetings in Gaza
November 6-7	Review meeting with USAID ROL programming feasibility Preliminary options identified
November 9	Team member memoranda on assigned subject areas
November 10	Review meeting with USAID Priority options selected
November 10-11	Additional information collection as necessary
November 12	Team preparation for briefing and report preparation
November 13	Draft final report, assessment/oral debriefing
November 14	Team departs from Tel Aviv
November 18	Mission provides comments on draft assessment
November 19-24	Additional Washington appointments/revision of draft
November 27	Final assessment completed